

A
LETTER

TO A

Convocation-Man

Concerning the

RIGHTS, POWERS, and
PRIVILEGES of
that Body.

L O N D O N,

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Some of the most Considerable Errata of the Press are thus to be Corrected.

Page 1. Line 20. after *self*, read *have*. p. 10. l. 25. for *universities*, r. *University*. p. 12. l. the last, f. *seem'd* r. *serv'd*. p. 13. l. 18. f. *Church* r. *Faith*. p. 15. l. 21. f. of r. *for*. p. 17. f. *with* r. *within*. p. 23. l. 13. f. *Party* r. *Parity*. l. 17. f. *separably* r. *separately*. p. 25. l. 13. f. *Patronages* r. *Baronages*. p. 29. l. 9. f. *Archbishops* r. *Arch-Deacons*. p. 32. l. 25. f. *who* r. *which*. p. 34. l. 10. aft. *summon'd* r. *it*. p. 38. l. 17. aft. *prohibited* r. *to hold such Assemblies*. p. 42. l. 4. aft. *totumque* r. *Clerum*. p. 36. l. 18. f. *convinc'd* r. *convicted*. l. 23. f. *les* r. *his*. p. 48. l. 6. f. *as r. us*.

The Author's Distance from the Press may have Occasioned other Mistakes, which the Reader is desir'd to Correct, or Excuse.

(1)

A
LETTER
TO A
Convocation Man,
*Concerning the Rights, Powers, and
Priviledges of that B O D Y.*

SIR,

I Will be as good as my Word with you, and give you an Answer to those Three Questions which you were pleased to put to me in our last Conversation: 1. What occasion there is at present for a Convocation? 2. What Law there is, that commands or permits their Sitting and Acting, but the absolute free Pleasure of the Prince?

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3. Of

3. Of what Validity their Acts and Resolutions are, unless confirmed and approved by Parliament?

The First of these Three Questions I should regularly have ask'd You: the particular course of your Thoughts and Studies has made you better able to answer it, than I am; and I think Your attendance on Convocations has left you Leisure enough to do it: However, since you tell me you expect My Opinion upon it, I, who can deny you nothing, will not deny you That. In plain English, then, I think, that, if ever there was need of a Convocation, since Christianity was established in this Kingdom, there is need of one Now: when such an open looseness in Men's Principles and Practises; and such a settled contempt of Religion and the Priesthood have prevail'd every where; when Heresies of all kinds; when Scepticism, Deism, and Atheism it self over-run us like a Deluge; when the Mosaiick History has by Men of your Own Order been cunningly undermined and exposed, under pretence of explaining it; when the Trinity has been as openly denied by some, as the Unity of the Godhead sophistically opposed by others; when all Mysteries in Religion have been decried as Impositions on Men's Understandings, and nothing is admitted as an Article of Faith but what
we

we can fully and perfectly comprehend: Nay, when the Power of the Magistrate and of the Church is struck at, and the indifference of all Religions is endeavoured to be established, by Pleas for the Justice and Necessity of an universal unlimited Toleration, even against the Sense of the whole Legislature: At such a Time, and in such an Age, You, and I, Sir, and all Men that wish well to the Interests of Religion and the State, cannot but think, that there is great need of a Convocation.

There is need of it to give a Check to the farther proceeding of these loose and pernicious Opinions; or, if that cannot be done, yet, at least, to remove the Scandal which their Growth and Impunity have brought upon this Church and Nation: especially, when we consider the sad Effects of these Opinions with regard to the Corruption of Men's Morals.

Sir, It is no News to either of us, (who are sometimes used (you know) to look abroad, and see how the Wind stands from *Holland*) that the Socinians and other Anti-Trinitarians there, and their Abettors, are free enough in claiming Our Church to their Party; Men of their boasted Probity and reason would not, we may well think, pretend to it, without some grounds; the avowed Doctrines and Principles of our Church, we are

sure, afford them none; and we are not able to guess whence they should have any, unless from the private Encouragements and Furtherance, they have found in their Secret Correspondence with some of our Members, that now make a very considerable Figure in it: Some Letters that have appeared not long since, in the Account a nota-

ble Socinian * has given us, of the Reasons of his embracing the Romish Religion, have startled many considering Men amongst us, and made them doubt, there is somewhat more in these boasts of that sort of Men, than yet appears above-board; and inclined them to conclude, that the honest Divine in Holland was not very much mistaken, who on that

† *Jurien Tableau du Socinianisme ala Haye, 1690. Prim. part, 5. lettre, p. 211.*

† occasion about six years since expressed himself thus concerning Them and Us. On this score, says he, I shall add, that the Church of England, which is the most illustrious part of our Reformation, owes us something for our Edification: God forbid, we should give any Credit to the Accusations made on that account against her; but in consideration of the confidence wherewith the Pleaders for an universal unlimited Toleration on this side the Water accuse her for being in their Opinions; I must take the boldness to say, She ought not to refuse a publick, and in some sort solemn disavowal of them, to refute those Calumnies.

* About

* About the same time we were thus called upon from thence, the Synod of the *Walloon Churches* of the United Provinces assembled at *Amsterdam*, being informed by the Memorials and Instructions of their Churches, and by a † Letter from between 30 and 40 of the *French* Ministers here at *London*, that several of their Communion did both there and here teach the *Socinian* Heresies, some of them openly; and that others of them more artificially hid their Poison under the Cover of an unbounded Toleration: This Synod, I say, then thought it necessary, solemnly and unanimously to condemn several Propositions of that Nature and Tendency, as *false*, *scandalous*, and *pernicious*; forbidding under the highest Censures; all Persons Ecclesiastical or Secular, to vent them either in their Sermons, Lectures, or even private Conversations; and ordering the private Persons found faulty in that kind, to be excommunicated, and the Ministers to be suspended from their Charge, till the next Synod should determine farther concerning them:

* r. *Extrait des articles resolu au synod del Eglises Wallones, Ec. Lettre 8. p. 565. Tableau du Socinianisme.*

† *Ibid.* 559.

We have reason to Honour this Synod, upon the account of its laudable Zeal for the Faith;
you

you may well remember, on another occasion, with what warmth and eagerness the Judgment and Example of the Reformed abroad have been pressed upon Us; and our being permitted now to follow Their Example, cannot reasonably be opposed by those, who have upon other occasions laid so great a stress upon it; especially when the danger from those Opinions is now so much increased, and the occasion so much more pressing: For tho' the many Socinian Pamphlets, then Published without controul, did great mischief among us at home, and gave some grounds abroad for the Brags on the one side, and the Suspicions on the other concerning us; yet the (falsly stiled) *Vindication of the Holy and ever Blessed Trinity*, &c. with the several bold Defences of it, the Sophistical account of the *Reasonableness of Christianity*, the Treatise call'd, *Christianity not Mystrious*, and the Discourse concerning the *Divinity and Death of Christ* had not then appeared, nor was the shameful Correspondence abovemention'd then discover'd.

Indeed, to be plain, there seems to be an universal Conspiracy amongst a sort of Men, under the Style of Deists, Socinians, Latitudinarians, Deniers of Mysteries, and pretending Explainers of them, to undermine and overthrow the Catholick Faith. There seems too much reason to fear,

fear, there is no Order, Degree, nor Place among us, wholly free from the Infection : And as a Convocation regularly meeting and acting freely, is the greatest fence against these Mischiefs, and the most proper Instrument to apply a Remedy, so you cannot allow your selves to doubt, but that my Lord of Canterbury's Piety and Zeal will move His Grace to represent it so ; and incline His Majesty (who has run so many Hazards *abroad* for securing our most Holy Religion pure and uncorrupted) to think, there is now a proper and needful Occasion of using this means to preserve it *at home*.

You cannot imagine the mischievous effects, which these various Opinions and Heresies of late Published and Vindicated, have produced amongst the Laiety ; they are such, that a Convocation seems necessary, not only for the sake of the Faith and Doctrine of our English Church, but even to preserve the belief of any Revelation : Such are the Inferences which the Gentlemen of this Age make from the Books above-mentioned, and the Opinions delivered in them, as command Your Declaration, that there is a Religion enjoined by Heaven ; for otherwise you must expect, that the next Age will believe none ; I am loath to be more particular, but the Cause and the Effect are both plain.

Sir,

Sir, I am sensible, that there are two or three things, which may be objected to this Proposal. It will be said perhaps, that my Lords the *Bishops* have a standing Jurisdiction and Courts of their own, wherein they may proceed and judge of Heresie, and censure the Persons Guilty of it; that the *Universities* have the like Power within themselves; and that His *Majesty* by Virtue of His Supremacy, hath Power, according to the Laws of the Land, to oblige them to do their Duty in this, as well as in other Instances: That some of the Heretical Opinions from whence so much danger is pretended, have been censur'd in this way, and the Offenders Punish'd; and that His *Majesty* hath been graciously pleas'd to give His Directions to my Lords the *Bishops* forbidding the use of any *New Terms* in the explaining of our Faith, and commanding and encouraging the *Bishops* to use their Authority therein; and that therefore these Mischiefs may be prevented in the ordinary way, without having recourse to a Convocation, where Mens Minds may be easily put into a Ferment; and from which sort of Meetings, a Great Man, not long since President of it, has been reported by his Creatures to have said, *he never knew any good to come.*

Now,

Now, as to the Power and Jurisdiction of my Lords the *Bishops* in Matters of Heresie, whatsoever it be originally, and of Ecclesiastical Right, yet it is, you know, by the Laws of *England*, confin'd within particular bounds; and beyond those Bounds they are not allow'd to have any Authority to Determine or Punish; and are, consequently in very great Peril, if they exceed them: And whether they do or not, is to be judg'd in the Temporal Courts, where Theirs are esteem'd and treated as Foreign Courts, and as derogatory to the Crown and its Perogative, altho' all of them are holden by the same Law, and under the same Authority.

Under such a limitation of their Powers, and an Uncertainty of what construction shall be made of their Use of them, and an hazard of their Liberties and Estates if a construction be made in their Prejudice, it cannot be pretended reasonable to expect the Suppression of Heresie from their Single Endeavours, (and they cannot act otherwise than Singly unless in Convocation): And therefore this Objection can proceed only from such as do in good earnest desire and endeavour the Progress and Encrease of Heresie.

You need not doubt but that their Lordships are sufficiently sensible of the great Power and Malice of their Enemies, and may well hope to be

excus'd to all considering Men if they do not hastily run into the Snare which such treacherous Pleaders for their Authority would lay for them.

The only Prelate I can think of, who has had the boldness to enter the Lists with these Men, agreeably to the ancient Courage of his Family, and to that Zeal for the Honour of God, and of His Church, which is so confirm'd and distinguishing a part of his Character, how basely was he every where traduc'd by this Set of Men? How falsely represented, even where it concern'd Him, and the Cause he was Embark'd in, most to appear in a just and true Light? Such and so many expensive discouragements were enough to have shaken and tir'd any Man of less Resolution and Integrity: And tho' his Lordship had the Honour and satisfaction of seeing the greatest *Credit and Support of the Bench* all along, and the *Highest Court of England* at last, declare in his favour: 'tis an Honour you cannot expect that many will contend for, a Satisfaction that very few will care to purchase at so dear a rate. The Man thus Excommunicated by *That Bishop*, and solemnly condemned by the Universities for notorious Heresie, enjoys (as I am inform'd) a Living with Cure of Souls, untouch'd, and even unquestion'd by *Another*, who wants not Courage or
Zeal,

Zeal, we know, for the Honour of his Character, but is more wary than to cast himself into the expence and uncertainties of a long Law-Suit.

As to the Authority of the *Universities* in this case, the *Coercive* part of it (the only part that can do any good in such a corrupt Age as this) extends only to their own Members. An

* Author I have, lately mention'd, had * T-----d. not else in publick Conversations dispers'd his pernicious Notions in one of 'em so long as he did, unpunish'd; nor chosen to leave it at last rather tir'd with the successlesness of his Endeavours, than scar'd with any ill Consequence that might attend them. It is so far from that, that I am told, he has entertain'd new Resolutions of returning thither, and of entering the Town in Triumph, upon his late fancied Defeat of Mysteries. The Congregation *de propaganda Infidelitate* have, it seems, thought fit to dispatch this warm Missionary into those Parts, once more to try his Fortune in making Profelytes; in which they have some hopes he will succeed better than formerly, since he has erected himself into an Author, and has had the Honour of being answer'd, and has made some little noise in the World.

If They and He continue in their Resolutions, the University will, I question not, take such Mea-

tures as are proper for her safety. Should She have no direct Authority over a Stranger ; yet she can hinder him from holding Commerce with any of her Members, or from entering into any of her Libraries ; and this, I dare say, she will do, if he ever presumes to fix himself there, and to disturb the Peace of that place, a second time.

Whatever further Powers *Universities* may be thought to have in these and the like cases, yet those Powers have, you know, been us'd but sparingly, and not without some Difficulty and Check, and have, when exercis'd, been pursu'd always with the Calumnies and Outcries of the whole Party. --- Some good effect indeed the exerting of 'em has had in One of those Learned Bodies, but the Influence of it has not reach'd so far as we might have wish'd and expected.

His *Majesty's* Authority over the Bishops and Them can reach no further than the enforcing the Exercise of those Powers, which I have shewn and Experience proves, to be too short, or clogg'd with too much difficulty and discouragement to attain the end we all so much want and contend for. And tho' the Church has great acknowledgments to make to His *Majesty*, for those very Pious Admonitions and Instructions He has been pleas'd to give the *Archbishops* and *Bishops*, in His excellent Letter to them ; which has not only seem'd to

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countenance the Orthodox but in some measure, to quiet and depress the Insolence of the bold Innovators in the Faith, and the prevaricating Interpreters of it : Yet even That Letter it self has been broadly hinted by some of 'em (however we are well assur'd, with much untruth) as intended in their favour. And so long as these Books pass uncensur'd, and unretracted, under the Style and Name of Men of great Place and Character in the Church, the mischief which the Authority they have yet left with some Men, may be able to do, is not sufficiently prevented, nor the Scandal wip'd off from our Church and Nation.

So that all we can conclude from what His Majesty has done in this Matter, is, that he hath discover'd by it a Godly Concern for the support of the *Catbolick Church* in His Dominions, of which he is the avow'd *Defender*, and a readiness to do yet more for its Defence and Encouragement, when the true and only proper means of doing it, the humble Advice of His Clergy assembled in Convocation shall be seasonably and fully laid before Him.

If there should be any of that Venerable Body, who should have the Boldness to attempt to raise a Ferment in it, in defence of Doctrines or Persons too justly liable to censure, it's not to be doubted but

but that the Piety, and Moderation, and Christian Courage of the rest will be soon able to suppress it, and to advance the good Ends for which they are call'd: But as it is easie to be observ'd, that None are so great Enemies to the frequent Use of Parliaments, as They, who, by the disappointment of their Ends upon them, have taken a disgust; or, by their corrupt Dealings, in the Course of their Ministry, have most reason to fear them: So, the like Use of a Convocation cannot, with any Grounds, be distrusted by any, but such as have either been defeated already in their Practices upon it; or else have less Concern for the preserving the Unity and Integrity of the Catholick Faith, than for some new-fangled Opinions of their own which expose them to Censure.

If, after all, it should be pretended, that the proper way of redressing these Mischiefs and Grievances is by Parliament---That there are Lords Spiritual and Temporal, &c--- To this it may be reply'd, that, as it is certain in Fact, that, notwithstanding the Urgency of the Occasion, yet no Relief has hitherto been effected that Way; and, tho' the Commons have a standing Committee for Religion, yet nothing, as I remember, has, since the Revolution been done by 'em in behalf of it; So it is farther considerable, that such a Method is, in the Nature of the thing, improper: 'Tis a little

little too much to suppose Country Gentlemen, Merchants, or Lawyers, to be nicely skill'd in the Languages of the Bible, Masters of all the Learning of the Fathers, or of the History of the Primitive Church, which They must, in some measure, be, who sit Judges of Religious Doctrines and Opinions. The Bishops concurrence in the Lords House is not requir'd to a Vote (tho' their Summons is necessary to make a Session) they may be, and frequently are outnubred by the Lay-Peers : Their calling thither is upon another Principle ; viz. by reason of their Baronies. Besides, the ascribing such a Power to either of the Two Houses, or to both of 'em together, is to confirm the grounds of the Papists Cavil at our Reformation, when they say, that Our Religion is meerly Parliamentary, and changeable at the Will of the Prince, and of the Majority of the Peers and Commons : an Assertion, which, I believe, there is no worthy Member of either House, but would reject with Disdain, as Zealous as they are of their Just Powers and Privileges, upon other Occasions. I have that Opinion of those Noble and Worthy Men, that compose the Two Houses, as not to doubt, but that They, if they were to sit Judges of this Controversie, would certainly determine in Favour of that Holy Faith, into which they were all baptiz'd, and would readily and warmly assert
its

its Interests : And I have, at the same Time, *that* Opinion of 'em too, as to think, that, were the Controversie laid before 'em, they would certainly decline giving Judgment in it, and remit it to its proper Tribunal, a Convocation. For the same Reason, that They are concern'd to maintain the Rights and Priviledges of their own Body, they would be careful not to invade those of another. They are wise enough to know, that the preserving the Constitution, as it is, is the best way to preserve their True and Real Interests ; and that the Constitution can be no otherwise upheld, than by the several Parts of it being preserv'd in their Just Rights and Powers ; allow'd to act in their Proper Spheres, and circumscrib'd within 'em : This, I say, they are Wise enough to know ; and withal Just enough to own, that a Convocation, is as much a part of the Constitution as a Parliament it self.

Suffer me, Sir, to consider that Opinion, which puts the management of Powers meerly Ecclesiastical into the Hands of Lay-men ; suffer me, I say, to consider it a little farther, and to the bottom. 'Tis somewhat without the Bounds of my Study ; and I may therefore talk wildly ; If I do, You, who have drawn the Trouble upon Your Self, must e'en bear it patiently.

It's agreed, I think, that Almighty God is the Author of all Lawful Power, whether it be Spiritual or Temporal, Ecclesiastical or Civil: At least, if there should be any difference of Opinion concerning Civil Magistracy, and the Origine of That, yet no Christian, I suppose, will deny the Original of Ecclesiastical Authority to have been from Heaven. None will say otherwise, but such, who esteem Religion to be meerly an Human Invention, set a-foot for the better Government of the World; and even They must agree, when they discourse to the *Governed*, that 'tis of Divine Institution, even for the sake of their own pretended Policy; or else, its Influence is lost.

These Powers are distinct in their End and Nature; and therefore ought to be so in their Exercise too: The One, relates to the Peace, Order, Health, and Prosperity of the Man in this Life, as a sociable Creature; the other concerns his Eternal State, and his Thoughts, Words, and Actions, preparative thereto: The First is common to all Societies whether *Pagan* or *Christian*; the Latter can Rightly be exercised among Christians only; and among *Them*, not as inclos'd with any Civil State or Community, but as Members of a Spiritual Society, of which Christ Jesus is the Head, who has also given out Laws, and appointed a standing Succession of Officers under himself, for the Government

of this Society. And these Ministers of his did actually govern it, by those Powers committed to 'em from Him, for near 300 Years, before any Government was Christian. From whence it follows, that such Spiritual Jurisdiction cannot be in its own Nature necessarily dependant on the Temporal; for, then it could never have been Lawfully exercis'd, till Kings, States, and Potentates became Christian. And as Christianity could not, at this rate, have been planted *at first*, till Kings were converted, so must it *still* be very precarious as to its duration and continuance; and removeable at pleasure, whenever any Prince shall not think fit to encourage it.

It was the Opinion indeed of a late *Great Preacher*, that Christians under a *Mahometan*, or *Pagan* Government, ought to value the Peace of the Country above the Conversion of the People there--- But, for all that, few, I dare say, who have read, and believe the New Testament, can forbear thinking, that the Laws of Christianity oblige those to whom they are publish'd, tho' living under the Dominion of a *Turk*, or an *Heathen*; and, consequently, that there may be amongst such Christians the Exercise of an Ecclesiastical Jurisdiction, not dependant on the Temporal Power of that Place.

The Church then is a Society instituted in order to a supernatural End ; and, as such, must have an inherent Power in it, of governing it self in order to that End : for a Society, without a Power of Government, is a Bull in Polity.

There being in this Society a distinct Order of Men , particularly impower'd, and qualify'd to teach, instruct, and govern the whole Body, in relation to the Ends of it ; and the supernatural Means of exercising these Powers (Immediate Illumination) not being by the Author of its Institution thought necessary to its continuance, it is, on that score, left to such Ordinary and Natural Means as conduce best to its End ; such as Assembling, Debating, and by Majority of Voices Deciding, concerning such Rules and Principles as the Society is to be govern'd by.

The Law of this Society is indeed made to their Hands ; They have no Power of changing, adding, or diminishing : but the applying this Law to particular Cases, explaining the Doubts that may arise concerning it, deducing Consequences from it in things not explicitly determin'd already by that Law ; and the enforcing Submission and Obedience to their Determinations, are the Proper Objects of their Power and Jurisdiction.

This Power having been actually claim'd and exercis'd, by the Apostles and their Successors, with-

out regard, nay, in opposition to the Heathen Temporal Authority, is therefore, we say, not necessarily in its own Nature dependent on such Authority. And if we should say farther, that this Society has an Inherent, and Unalterable Right to the Exercise of this Power, it would be no more than what every Sect and Party among us claims and practices; and what the Defenders of an Universal and Unlimited Toleration, by their own Principles, are bound to allow and justify: And we may presume, such strict Pretenders to Reason will not say, that the *Church of England* declar'd free by *Magna Charta*, establish'd, fenc'd, and supported by our Laws, is, even by that means, in a worse Condition, than the most inconsiderable Sect or Party, now indulg'd or tolerated among Us.

But this is, what, at the present, we neither do, nor need say; tho' it is more than the Objectors will easily reply to; such, I mean, as are really of any Religion among Us. But for such, as indeed have no Religion at the bottom, nor any Notion of a Church, however for their Worldly Interest they may pretend to this or that Party, by joining themselves to its Communion (and too many such, we may justly believe, there are amongst us) that such may be for ever silenc'd in this Question, it will be proper to shew them what the Law of their Country

Country says in this case; *That Law*, the Obligation of which, whatever else they think fit to disclaim, they cannot but own and acknowledge. They are to know therefore that

A *Convocation* is an Ecclesiastical Court or Assembly, essential to Our Constitution, and established by the Law of it, by the same Law as the Gentleman receives his Rent, or the Member enjoys his Priviledge. And my Lord *Vaughan* therefore, who made as great a Figure in St. Stephen's Chappel as ever he did on the Bench, agrees, that a Lawful Canon is the Law of the Kingdom, as well as an Act of Parliament; and whatever is the Law of the Kingdom, is as much the Law as any thing else is so: For there are no Degrees of Comparison in the Matter: A Law cannot *Suscipere magis & minus*. But the fuller state of this point will more properly fall under the Two remaining Enquiries, in One of which You have oblig'd me to shew,

What Law there is that commands or permits their Assembling, Conferring, or Resolving, as a Convocation, but the absolute free Pleasure of the Prince?

Before I give a direct Answer to this Question, I shall take leave to say, that, should it be admitted, that the Assembling of Convocations is entirely dependant on the Sovereign's Will, yet, considering the great Need there, at present, is of one,
we

we cannot doubt of the King's Gracious and ready Concurrence to this purpose, upon the least motion of His Grace, my *Lord Archbishop*. And notwithstanding the disuse of a Convocation, and the defeating the Ends of it by repeated unwarrantable Adjournments, during the Life of the *last* Metropolitan, yet the *present*, we question not, would zealously move and promote their Assembly and Session, to the Honour of Religion, and Good of the Church, if He had intimation of the necessity and seasonableness of it.

His commendable Warmth for the Establish'd Church against the Enemies of it on one side, assures us, that he will undoubtedly, on this occasion, express even a greater Zeal (in proportion to the greatness of the Danger) against those of the Other. And as for His Majesty's Good Will, we do not, I say, we will not in the least doubt of it: Tho' some, who would be thought to understand His Mind best, and to be most in his Interests, are pleas'd in all Companies to admire and celebrate a Prince of no Religion, as the best of Governours: For which sawcy Insinuation, we hope, in time, that Vengeance will find em.

Had we no hold on His Majesty's *Kindness and Affection* towards the Religion established by Law, yet should we not suspect his compliance on the score of *Strict Justice*. His *Coronation Oath* obliges him

him to preserve the Rights of the Church of *England* intire; and we humbly presume, That one of the chief of those Rights is a frequent sitting of Convocations, as shall be largely made out by and bye.

He has, since his Accession to the Crown, several times conven'd the *Scotch Assembly*: And the *Church of England* therefore, which pays as much regard, at least, to Crown'd Heads, as an *Assembly* does, may justly expect as tender a Concern for her Welfare and Interests from him. The Friends of Monarchy, who acknowledge the King their Supreme Head and Governor, may, we think, as safely be trusted together, as the profess'd Assertors of a Levelling Party, who pretend to no Union with the Civil Power, No Political Dependance upon it, but to act separably and set up for themselves.

Let Men whisper what they please, no body shall ever perswade us, but that His Majesty's Judgment and Piety engage Him to be present at our Service and Communion: And notwithstanding all the Contumely and Reproach of our Enemies, we cannot discover what Sect or Perswasion there is among us, either so amiable, as to steal his Inclinations from us; or so numerous and powerful, as to make it a piece of Policy not to espouse Us.

I shall,

I shall, in this case, very freely borrow the words of a certain Author, who wrote either at the declension of the last, or the beginning of this Reign. *We may, says he, consider Our selves as the only great and united Body of Protestants in the Kingdom, with whom all other Parties compar'd bear no considerable proportion.* For tho' the Nonconformists consider'd abstractly make a vast number of useful People, yet being laid in the Scale with those of the Episcopal Communion, they are but few, and lye in a little room. And whosoever will be at the Pains to ballance the One against the Other, even where the Dissenters make the greatest Figure, and may justly boast of their Numbers, they will soon be convinc'd, that the other doth far exceed them. And if it be so in Cities and Corporations, where is the greatest Multitude, it is much more so in the Country Parishes, where they bear not the proportion of One to an Hundred.

Nor doth the *Church of England* more exceed the other Parties in her Numbers, than she doth in the Quality of her Members; for whereas they who constitute the separate Congregations, are chiefly Persons of the middle Rank and Condition, the *Church of England* doth in a manner vouch and claim all the Persons of Honour, and of the Learned Professions, and such as have valuable Estates, for her Communicants. And tho' the
other

other sort are as necessary in the Commonwealth, and contribute as much to its Strength and Prosperity, yet they make not that Figure in the Government, nor stand in that Capacity of having Influence upon Publick Affairs. For not only the Gentlemen of both the Gowns, who, by reason of their Calling and Learning, are best able to defend our Religion, and vindicate our Rights and Priviledges by their Tongues and Pens; but They whose Estates, Reputation, and Interest recommend them to be elected Members of the great Senate of the Nation, as well as They, who, by reason of their Honours and Patronages, are Hereditary Legislators, are generally of the *Church of England*. So that They who conform to the Establish'd Worship and Discipline are to be look'd upon and acknowledg'd as the greatest Bulwark of the Protestant Religion in *England*, and the Hedge and Fence of our Civil Rights and Liberties.

Thus far my Author. Now, the use I would make of these Reflections of his, is, to shew, that it cannot be worth any Prince's while to discourage the *Church of England* in order to gain the favour of any, or of all these separating Parties; and therefore that His Majesty, we may be sure, will be tender of the Interests of Our Church, when His Own Interest, as well as

His Affection and Judgment, lead Him to it.

But could it be suppos'd, that a Wise Government would fall in with the Dissenting side, and act by the Measures which should from that Quarter underhand be prescrib'd, yet can we not imagine, that the Dissenters themselves would interpose in this case, to hinder the Sitting of a Convocation. They know, that You pretend not to meddle with those that are without, nor to exercise any Act of Jurisdiction over them; but only to frame Rules and Decisions, that shall hold within your selves, and to Govern and Judge your own Members. You envy not *Them*, I dare say, their *Legal Indulgence* nor any Priviledge which They enjoy under it; nor do They, I hope, envy You your *Legal Establishment*, or any Right that You claim from it. You differ indeed from one another in Matters of Discipline and Ceremony; but in Matters of Faith and Doctrine You agree. And if therefore they wish well to that *Common Faith*, they will be glad to see it asserted against Heresies and Innovations by a Synod of *English* Divines, whose Judgment in points of this Nature and Importance, They and all the World must revere.

There can be no Opposition from that side therefore: The greatest danger, in this case, is by Some thought

thought to arise from such as are Enemies to all Religion, and to all the Professors of it; and, consequently, are most so to those of the *Church of England*, because they are the firmest support of Religion, by reason of their Number and compacted strength, under a Legal Establishment. But tho' the encrease of these kind of Men shows, that there is great need of a Convocation, yet their Interest, we hope and believe, can never be considerable enough to prevent its sitting and acting.

'Tis very hard to suppose, that a Government should be influenc'd to such a degree by Men who can never be Friends to any Government; and who are incapable of having any effectual Obligation ever laid upon 'em from the Principles either of Good Nature, Duty, or Gratitude.

Were the calling therefore of Convocations lodg'd purely in the Breast of the Sovereign, yet could we have no manner of Jealousie of His Princely readiness to Call them. But now, besides the King's good Intentions, we have the good Intentions of the Law too on our side: And what *That* says in the case, is to be the next and Chief subject of Enquiry.

An exact and full Account of this Matter cannot be given, but by One, that has great Skill in our *English Laws* and *Antiquities*, and besides a

great deal of Leisure. The latter of these You know very well that I want; and I am sure, I know, that I want the former. I content myself to have Law enough to be useful to my Neighbours where I live, and to be able to serve my Country in Parliament. So that You must not expect from Me a compleat History of all the Rights and Powers of a Convocation, deduc'd regularly through the several Periods of Time, and Reigns of our Kings; but only a short Account, how the matter stands, or ought to stand, by our Law, at present. And if, in giving this very Account; you expect I should use a scrupulous strictness of Style and Method; say not a word more or less than I need say, and every thing just in the very place where I ought to say it; in This too, Sir, you will find your self mistaken.

What I offer, lies within a little compass; the Books I shall consult upon this occasion are in every Bodies Hands; and yet, perhaps, what I produce from thence will have the advantage of appearing New; because we live in an Age when Convocations, and the Learning that relates to 'em; are out of Fashion, and even Understanding Men are content to know as little of an *English* Synod, as of a *Jewish* Sanhedrin. But to return to our point.

A *Convocation* is the Highest Ecclesiastical Court or Assembly ; it is call'd and conven'd in Parliament-time, by the King's Writ, directed to the Archbishops ; it consists of all the Clergy of both Provinces either Personally or Representatively present : In the Upper-House are the Arch-Bishops and Bishops ; in the Lower-House, or House of Commons Spiritual, are the Deans, Arch-Bishops, one Proctor for every Chapter, and two for the Clergy of each Diocess. This is the Court.

Our Laws are by the best Authors divided into Ecclesiastical and Civil ; and the same Division holds for our Courts : The same distinction is likewise us'd for Causes examinable in those Courts : Nor is the distinction less common in respect of Persons : Of which the several Instances and Authorities are too plain and known to need any Exposition. Now as the Parliament is the highest Temporal Court, so is a Convocation, or National Synod the highest and most supreme Court Christian within this Realm, and each gives Laws respectively to all Inferiors.

The King indeed is Supreme Head over all Persons, and in all Causes within these Dominions : Our Laws and our Oaths taken in Obedience to them have declar'd him so ; and with sound reason, in contradiction to all Foreign Powers and
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Jurifdictions : But it is apparent by our Constitution, that the King is intrusted with the Power of Convening Synods or Convocations, in respect of the Church, as He is with summoning Parliaments, for the redress of Grievances, and the Publick Safety of the Nation ; in the same Manner, and under the same Limitations.

'Tis true, a Convocation cannot assemble without the assent of the King ; His Writ is necessary in order to it. But the Question is, Whether that Writ ought not to Issue, whensoever a Summons goes out for a Parliament ? And in order to a resolution of this, it may not be improper to consider the great resemblance there is between a *Parliament* and a *Convocation*. Each consists, as I said, of Two Houses, and these have (or *should* have) their several Prolocutors ; One of which is to by Vertue of his Precedency and Place ; the Other is chosen from among themselves. The One of these Courts is of the same Power and Use with regard to the Church, as the Other is in respect to the State. Nay, tho' they have different Names, and the Word *Parliament* be appropriated to signifie a Temporal Legislature, yet anciently the same Appellation belong'd to both. A *Wittena Gemote* signifi'd what we call a Parliament, and a *Church-Gemote* what we call a Convocation.

It's observable therefore, that the Judges use the same Words with regard to the King's Writ about a Convocation, as they do, when they mention the Summons of a Parliament; and, to satisfy You, that the One stands upon the same Foundation and Principle, with regard to the King's Prerogative, as the Other doth, it may be convenient to recollect the Common-Law Maxims, us'd, and frequently urged by Our Enemies for the One; and You will find them applicable in like manner to the Other; viz. That the Kings of *England* can do nothing as Kings, but what, of Right, they ought to do; That the King can do no Wrong; That the King's Prerogative, and the Subjects Right are determined by Law; That the King hath no Power but what the Law gives him; That the King is call'd *Rex à bene regendo*; i. e. according to Law; because (say they) he is a King, while he rules well, but a Tyrant while he oppresses; That the Kings of *England* never appear more in their Glory and Splendor, and Majestick Sovereignty, than in Parliament; That, the Prerogative cannot do Wrong, nor be a Warrant to do Wrong; and they quote *Plowden*, and other Books to this purpose. They say farther, that Parliaments constitute, and are of the Essence of the Government; That they are Bulwarks of Our Liberty, the Boundaries that keep

us from the Inundation of Tyrannical Power, That their Business is to make and abrogate Laws, and to redress Grievances : And from hence it has been argu'd, as self evident, that, if Parliaments are so absolutely necessary in our Constitution, they must then have certain Stationary Times of meeting and sitting, for providing Laws essentially necessary to the being and well-being of the People ; and, to this Purpose, several Authorities, from old Books and Statutes, are urg'd for the Frequency of Parliaments : And thus run many of the Popular Pamphlets in the two Last Reigns.

Nay, they farther insist upon it, that, were there no Statute, nor any thing upon Record extant, concerning the Necessity of Parliaments sitting to redress Grievances ; yet it must be so by the Fundamental Laws of the Government, which would be very Lame and Imperfect without it : For otherwise (say they) the Prince, and his Ministers might do what they please, and make Their Will the Law and Measure of our Duty ; which Defects must needs be provided against in the Essence and Constitution of the Government it Self. And this (says One of those Authors) we may call the Common-Law, who is of as much Value, if not more, than any Statute ; and of which all our Good Acts of Parliament, and *Magna Charta* it self, is but declaratory. So that, tho' the King
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be-entrusted with the formal part of summoning and pronouncing the Dissolution of Parliaments, which is done by Writ; yet the Laws, which oblige Him (as well as Us) have determin'd How, and When he shall do it: which is enough to shew, that the King's share in the Sovereignty, which is lodg'd in the Parliament, is cut out to him by Law, and not left at his disposal.

Thus far, and much further has it gone, with Publick Approbation: and this, before the *Triennial Bill*, by force of the Common Law, or certain Ancient Ordinances presum'd to be affirmative of it.

Now, to apply all this to our present purpose, let us consider Our Sovereign as a Christian King, whose Religion is established by the Laws, and the Profession of it moulded into the Form of a National Church, a Church which, by the same Law, hath its Rights and Priviledges; and This Priviledge, in particular, which is the Subject of the present Debate.

Let us take this View of things, I say, and then see, whether every one of the Axioms above-mention'd, will not hold, upon this account, as they do on the other. Does it not follow from hence, that tho' the King be entrusted with the Formal part of Summoning and Convening, yet, since by the very Essence and Constitution of our

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Church, a Convocation ought to meet, sit, and act; does, it not follow, that the Fundamentals of our Government shew him, when and how, that Power is to be exercis'd; and that it ought not to be at his free Will and Pleasure. It may not be grateful to enlarge on this Topick; and therefore I forbear: But a farther Application is very easie.

The Statute of 8 *Henry 6. cap. 1.* is strong for their calling whenever a Parliament is summon'd: runs thus--*Because the Prelates and Clergy of the Church of England called to the Convocation, and their Servants and Families that come with them to such Convocation, oftentimes and commonly be arrested, molested, and inquired, our said Lord the King, willing graciously in this behalf to provide for the Security and Happiness of the said Prelates and Clergy, by the assent of the Great Men and Commons aforesaid, hath ordained and established, that all the Clergy hereafter to be call'd to the Convocation by the King's Writ, and their Servants and Families, shall for ever hereafter fully use and enjoy such Liberty and Defence in Coming, Tarrying, and Returning, as the Great Men and Commonalty of England called, or to be call'd to the King's Parliament, do enjoy, and were wont to enjoy, or in time to come ought to enjoy.*

Now this, by the way, gives them the benefit of the 5 *Hen. 4. cap. 6.* and of the 11 *Hen. 6. cap. 11.* and all other Privileges in respect of their Persons and

and Retinue, which the Members of the House of Commons enjoy. But what I urg'd it for, is, that the King, the Great Men, and the Commons, esteem'd a Convocation to be an Assembly which was *frequently* and of necessity to meet, and sit too, and act: For otherwise, what need had there been to make these Provisions for 'em, and set out these Priviledges to 'em, if they were to be call'd only once in a Century or two, according as the Sovereign was, or was not in humour. The Act says, they were *frequently and oftentimes* arrested and inquired in their Coming; and, by consequence, they Came, and Met frequently.

That the Convocation is summoned by the King's Writ, is no Argument, that it is a Precarious Assembly: For, at this rate, All or most of the Writs under the Great Seal, which are either for the Publick Good, or Private Relief, may be said to be precarious too. But we say, that the Law of the Realm hath directed the King, or at least his Chancellor, Keeper, or other Minister, having the Custody of the Great Seal, to issue such Writs; and they can no more be omitted than any single Peers Summons to Parliament.

A Convocation may be consider'd, not only as a Court or Assembly for the making Laws in Ecclesiastical Matters, but as a *Court* properly so call'd, having Jurisdiction in respect of Crimes Ecclesiasti-

cal : and so runs *Coke's Account* of it , where he declares its business in part to be the preventing, or suppressing *Heresies and Schisms* ; and that therein they proceed *secundum Legem Divinam & Canones sanctæ Ecclesiæ* : and in ancient time it was frequently, and of necessity us'd to that End ; for, without it, there could be no Punishment of Heresie.

Fitzherbert, in his *Natura Brevium* (a Book I have heard the Professors of the Law vouch as good Authority with them) saith, that 'tis the Statute of 2 Hen. 4. cap. 15. which first enabled the Ordinary of the Diocese to convict of Heresie ; and this, by that Law, without the King's Writ. But then the 25 Hen. 8. cap. 14 doth repeal that Statute, and directs the Ordinary to transmit no Heretick to the Lay-power, without the King's Writ first obtain'd. But before the Statute of Hen. 4. every Person was to be convinc'd by a Provincial, if not a National Synod ; i. e. by the Archbishop and all the Clergy of that Province, as appears by the Recital made in our Old Writs to that purpose ; the form of which runs thus : *Salutem, cum venerabiles Pater Thomas Archiepiscopus Cantuar totius Angliæ primas, de consensu & assensu ac consilio Episcoporum & Confratrum Suffragan suorum nec non totius Cleri Provinciæ suæ in Concilio suo Provinciali congregat, &c.* had declar'd, and adjudg'd, &c. Now no Man will say, that this Act of Jurisdiction was precarious, and at the
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the King's absolute Will and Pleasure, whether it should be exercis'd, or not.

The Ancient Writ whereby the Bishops were summon'd to Parliament, doth seem to intimate as much, as I argue for in this Case. It hath the Common Recital of all Writs of Summons to Parliament : But then, as I find it in the New Edition of the *Register of Writs* (append.) it adds to the Command of the Bishops Presence these Words following --- *Et hoc, sicut Nos Et Honorem Nostrum, ac Salvationem Et Defensionem Regni Et Ecclesiæ prædictæ: Expeditionemq; dictorum negotiorum diligitis, nullatenus omitatis; præmonentes Decanum Et Capitulum Ecclesiæ vestræ Gloucester ac Archidiaconos totumq; Clerum vestræ Diæcesis, quod iidem Decanus Et Archidiaconi in propriis personis suis, ac dictum Capitulum per unum, idemq; Clerus per duos Procuratores idoneos plenam Et sufficientem potestatem ab ipsis Capitulo Et Clero divisim habentes ad parliamentum prædictum personaliter intersint, ad consentiendum iis quæ tunc ibidem de communi Consilio regni nostri (divinâ Clementiâ favente) contigerit ordinari. Teste meipso, &c.* I shall make no Remarks on the Words of this Writ, they are plain; nor will I dispute Coke's Exposition upon it, which is, that these *Procuratores Cleri* were call'd to consent to those things, which by the Common Council of the Realm should happen to be ordain'd, so as their Consent was to be only to such things as were so ordain'd

ordain'd : And therefore that there might be an Act of Parliament without them. I will not pretend to censure the Logick of this *Ergo* ; nor shall I concern my self in the History of our English Parliaments, how anciently constituted, or what share the Clergy had therein, or when they ceas'd to have it. VVhatsoever becomes of those *Points*, this to me seems certain, that the *Premonition* or Warning mentioned in this VVrit, being to those who are Members of, and constitute the Lower House of Convocation, is an Argument of invincible Strength to establish the necessity of Convocations meeting as often as Parliaments.

I must admit that it is said in the 2d. Part of *Rolls* *Abridgment*, that the Archbishop of *Canterbury* was prohibited by *Fitzherbert* Chief Justice, because he had not the Kings License But he adds, that the Archbishop would not obey it ; and he quotes *Speed* for it. I shall not consult that Lame Historian for a Law-Point ; and it seems strange that *Rolls* should cite him. But however his Assertion doth not affect what I contend for, that the Fundamental Rules of our Constitution command the Summoning and Convening of a Convocation, whensoever a Parliament is summon'd. Neither Peers nor Commons can assemble but by the King's Authority ; and yet we think
their

their Meeting not to be entirely dependent on Pleasure.

Look into the Abridgments of our Law; you will find a Convocation there always describ'd, as a Meeting of the whole Clergy to consult of Matters Ecclesiastical in *Time of Parliament*. Look into our common Vocabularies, where Terms of Law are expounded, You shall find, that *Blount*, *Minsheu*, and the rest of 'em, in their Exposition of the Word, constantly add the same Circumstance of Time.

Pardon me, Sir, for sending You to Books of this kind; their first and chief use indeed is, to explain Words, but they serve also to shew the Nature of Things as commonly believ'd and understood, under the use of those words; and to this purpose they have been employ'd by very Great Men, upon very great Occasions; witness the Debates about the *Abdication*, which are very full of *Dictionary Learning*.

One thing more I shall observe to You on this point, out of a Speech of *Grimston's* spoken in the House about the Canons of *Charles the First's Time*. You may see it at large in *Rushworth*. His great Complaint there is, that the Clergy fram'd these Canons *out of Parliament-time*, and *out of Parliament-time* gave Subsidies. And according to the account given us of this Debate in *Whitelock's*

Me--

Memoirs: The Question was, whether they were not dissolv'd by the Dissolution of the Parliament, without special Writ to that purpose? And there were great Opinions on either side of the Question: All which implies and allows, that they were to sit and act in Parliament time: And I think nobody will mistrust that House of Commons for being willing to allow the Clergy greater Priviledges than they really had.

Thus far, I think, Our way is plain and clear. But supposing all this, the Question still is, whether or no the Convocation may confer, after their Summons and Meeting, without the King's special License and Assent? In answer to which, I must acknowledge, that the common receiv'd Opinion is in the Negative. However, if what has been offer'd already, with regard to their Convening, have any weight in it, it must hold also in some degree, with respect to their Conferring and Treating when met, about Matters proper to their Cognizance.

If they are a Court, and have their Jurisdiction; or are a Legislature, and have the Power of making Ecclesiastical Laws (both which they certainly are and have) then the Liberty of Confering and Discussing is necessary to their very Existence: For otherwise they are an Assembly to little or no purpose whatsoever. If their Tongues
are

to be entirely at the King's Will, 'tis improper to give their Resolutions any Title but the King's Rules and Ordinances : They are to all Intents and Purposes *His*, upon whose Will, not only their Meeting, but their very Debating depends. This is too harsh to be asserted or suppos'd of a free English Synod, which, in so many respects as we have heard, resembles a Free Parliament; and cannot therefore be unlike it in that, which is most essential to it, a freedom of Debate and Argument.

The Prerogative Power of Assembling them by Writ doth not import a Power of Licensing or Confining them in their Debates, any more than it doth in the Case of a Parliament. Nor doth the *Writ of Summons* necessarily imply any thing of this nature, when fairly consider'd : It is in this Form,

Gulielmus Tertius Dei Gratiâ Angliæ, &c. Reverendissimo in Christo Patri & Fideli Consiliario nostro, Thomæ eâdem Gratiâ Catuariensis Archiepiscopo, totius Angliæ primati & Metropolitano, salutem. Quibusdam arduis & urgentibus negotiis, Nos, securitatem & Defensionem Ecclesiæ Anglicanæ, ac pacem & tranquillitatem Regni nostri & subditorum nostrorum ejusdem concernentibus, Vobis in fide & dilectione quibus nobis Tenementi rogando mandamus quatenus præmissis debito modo

intuiter attenditis & ponderatis, Universos & singulos Episcopos Vestre Provinciae, ac Decanos Ecclesiarum Cathedralium, nec non Archidiaconos, Capitula & Collegia totumque cujuslibet Diacesios ejusdem Provinciae ad comparendum coram vobis in Ecclesiâ Cathedrali Sancti Pauli Londini Viceſimo secundo die Novembris proximi futuri vel alibi melius expedire videritis cum omni celeritate accommodâ modo debito convocari faciatis, ad tractandum consentiendum, & concludendum super præmissis & aliis quæ sibi clarius exponentur ex parte nostrâ. Et hoc sicut Nos, statum Regni nostri & honorem & utilitatem prædictæ Ecclesiæ diligitis, nullatenus omittatis. Teste meipso apud Westmonasterium 12. die Octob. anno, &c.

There is nothing, I say, in this Writ that can be pretended to imply, that a License to Treat or Debate is necessary ; or that the King is to propose the Heads or Subject Matter upon which they are to Treat or Debate : Nor would such Proposal imply, that they could treat of no other that's proper for their Consideration. The reason suggested for their Call is, some urgent Affairs relating to the security and defence of the English Church, and the Publick Peace and Tranquility of the Realm ; it is in order to their Treating, Consenting, and Concluding *super præmissis & aliis quæ sibi clariùs exponentur ex parte Domini Regis.* Here are no Negative or Restrictive Words :
Nor

Nor is it said, which shall be *propos'd* to them: And it may be a Question in Grammar; whether the *Quæclarius Exponentur* ought not to be referr'd to the *Aliis*, as the last Antecedent, and not to the *Premissis*. But supposing the Words to have a general reference to all that foregoes, it can amount to no more than this, that the Particular Occasion of their Meeting shall be signifi'd more at large to 'em when they are met; which is what is practis'd in the Case of Parliaments by a Speech of the King's, or of some One of His Chief Ministers: But it cannot be concluded from hence, that therefore they are confin'd not to discuss any Matter that is not thus propos'd. Because the King says, that the urgent Affairs relating to the Security and Defence of the Church, which occasion'd their Assembly, shall be more fully represented to them there and then, on the King's behalf; Does it follow therefore, that, when Assembled, they must not discuss any Subject which is not so represented? I shall not, at present, entertain any Doubt, whether these Words were anciently and constantly inserted in those Writs, because I have not sufficiently enquir'd into it. But did the Writ run always thus, yet no Inference, I say, can be drawn from thence, to deprive them of their freedom of Debate and Treaty about Matters purely Spiritual and Christian.

Ere I dismiss this Writ, I must observe to You (tho' a little out of its proper place) that 'tis Test'd the same Day with the Summons to Parliament, that it commands an Assembly of the Clergy the same Day with their Meeting: And by the whole Tenor of it it appears, that the Weal of the Church, and of the State, the Peace of the Publick, and the King's Interest, are all concern'd in their Convocation and Assembling. One would think that the Consequence from hence should be, that whenever this Writ goes out, they should not only *Meet* formally, but *Sit* and *Act* as the Parliament do; that there should be a *Session of Convocation* as well as a *Session of Parliament*: That the Lower House should be form'd into a Body, have its *Prolocutor*, and opportunity given it to propose what shall be thought necessary for the Good of the Church; to pray the removal of Scandals, Inconveniences, and Grievances; and to do in Ecclesiastical Affairs what an House of Commons would claim a liberty of doing, at due Times, tho' the King had no Money to desire of them. This, I say, one would reasonably expect from the Issuing of such a Writ, and from the Nature of the thing; and not, that a Convocation should be summon'd Year after Year, and Parliament after Parliament, for no other End and Purpose but merely to be Adjourn'd; that a Venerable number

ber of Men should be call'd to Town, once or twice every Winter, from all Quarters of the Kingdom, in order to be told, that they must Go down again.

It is plain that Convocations ought to be held as often as Parliaments; but surely this is a very odd Manner of *holding* Them: Were a Parliament thus summon'd, and adjourn'd, e'er the Lower House had made a Vote, or so much as chosen their Speaker, I believe the Members of that House would hardly allow this to be *holding* a Parliament.

But they tell us, the Case is different; and that, tho' the Parliament, whenever it meets, acts a Course, yet a Convocation can not, without being particularly impowr'd by the King to that purpose. If this Assertion had Truth in it, it would indeed go a good way towards excusing every thing: but I have shewn already, and shall shew farther, that there is no manner of Ground or Colour for it. Even *Pryn* himself in his 2d. Tome of the History and Vindication of the King's supreme Ecclesiastical Jurisdiction, doth not pretend to stretch the Prerogative in this Matter any farther, than to prohibit the Clergy's assembling in Synod without his Summons, or their Debating and Concluding any thing in prejudice to the Crown and Kingdom: All which we fully and freely allow. But he never says (as I can find in any of those

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Three Voluminous Works of his, or in his Animadversions on the 4th. of the Institutes) that a License in Particulars is antecedently requisite to a Debate; or that a general License under the Broad Seal is necessary for a Deliberation. But, were either of these necessary, yet, for that very reason, it *ought* to be granted; and it matters not much, whether we say, that a License ought, *ex Debito Justitiæ*, to be granted, to empower 'em to Deliberate, or whether they have of themselves a Power of Deliberation, without such License expressly given. Nor can any Argument be drawn for the necessity of this License from its having been *desired*: (which, whether it has or not, I, who live in the Country cannot readily Answer) The *Speaker* of the House of Commons prays a Liberty of Speech; and that Liberty hath been sometimes granted under Restrictions and Limitations; for instance in Queen *Elizabeth's* Reign: And it is too well known, that she did sometimes commit Members of the House of Commons for pretended Excesses in the Use of that Liberty. Notwithstanding which, in every Reign, since that time, such Liberty of Debate hath been affirmed and allowed to be their Original Right, without Prayer by them, or License from the King to that purpose. And the *Present Speaker* therefore, when first presented in the House of Peers, did (as I remember) by Order

der or Intimation from the House omit to ask it. However the asking it, is no more an argument for its being dependent on the Sovereign's Pleasure, than it is a Proof that they have not, of right, a Freedom of Access to His Majesty's Person, because at the same time they ask That also. No, these are Fundamental Rights Essential to their Constitution, without which they might be an Assembly of Men, but not a Parliament. The very Word *Parliament* is deriv'd from *parler ment*, to speak one's mind, according to *Coke's Etymology*: And to say therefore that a Parliament may be without Liberty of Speech, is to use the Word without meaning any thing by it. Should therefore Liberty of Speech have, at times, been formally ask'd by the Convocation, and as formally granted by the Sovereign, yet this would not hinder its being their Right and Due without Prayer, and a Franchise necessarily incident to their Assembling. Their Desire in this case must be interpreted to be only an Instance of the respectful Duty of the Clergy towards the Crown, and not a real Proof of the Authority of the Crown over Them: And to say otherwise, is, to wound the Liberties of the Parliament, through those of the Convocation.

But I must not leave this Parallel here; it will be to our purpose to consider, a little farther, what
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is usually alledg'd in behalf of the Rights and Privileges of Parliament. The Great Friends of Liberty (as they would be thought) argue thus; that, not to permit them to sit, debate, resolve, and act, and thereby answer the great Ends for which they were instituted, as expressly contrary to the Common Law; and, consequently, to the Law of God and Nature, which are its Foundation; that thereby a Violence is offered to the Government it self, that 'tis a plain Infringement of the People's Fundamental Rights and Liberties. They quote the 2 Rich. 2. Numb. 28. as very notable to this Purpose: 'Tis in these Words, or to this Effect:

Also the Commons in Parliament pray, that forasmuch as Petitions and Bills presented in Parliament, by divers of the Commons, could not heretofore have their respective Answers, that therefore both the Petitions and Bills in this present Parliament, as also others that shall be presented in future Parliaments may have a good and gracious Answer, and Remedy ordain'd thereupon, before the departing of every Parliament; and that, to this purpose, a due Statute be enfeal'd (or enacted,) in force for all times to come. To this the King's Answer was, That the King is pleas'd, that to all such Petitions deliver'd in Parliament of Things or Matters which cannot otherwise be determined, a good and reasonable Answer shall be made and given before the Departure of the Parliament.

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Accordingly *Coke* observes in the 4th. of his *Institutes*, that Petitions being duly preferr'd, (tho very many) have been answer'd by the Law and Usage of Parliament, before the End of it: And this he says, appears from the ancient Treatise *de modo tenendi Parliamentum*, that the Parliament ought not to be ended, while any Petition remains undiscuss'd, or, at the least, unto which a Determinate Answer is not made. He says farther, that One of the Principal Ends of calling Parliaments is for redressing Grievances, which *daily* happen: and then, as to the departing of Parliaments, it ought to be after this manner, saith the *Modus*; viz. There should be Publick Proclamation and Demand, in Parliament, and within the Palace of the Parliament, whether there be any that hath delivered a Petition to the Parliament, and hath not received an Answer to it. If there be none such, it is to be suppos'd, that every one is satisfy'd, and answer'd; at least, so far forth, as by Law may and ought to be. And This Practice, Our Arguers say, is consonant to the King's Coronation-Oath, which is to Grant, Fulfill, and Defend all Rightful Laws which the Commons of the Realm shall chuse; and to strengthen and maintain them after his Power. If you think fit, You may read more to this purpose, about the Practice of Evil Princes, and the Fate of Evil Counsellors,

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fellors, who acted or advised the contrary, in the *State-Tracts*, printed for *Richard Baldwin*. And to what You there find on this Head, you may add farther, that thô the City's Remonstrance against a Prorogation before the Business in hand was determin'd, was the Forfeiture of their Charter by Judgment in *Quo Warranto* ; yet a Parliament, in this Reign, hath revers'd that Judgment ; and by a side-wind therefore hath declar'd and establish'd the Ancient Right of Parliament to sit, and act, and redress Grievances, without being cut off, in the midst of their Business, by hasty and abrupt Prorogations.

I may seem, Sir, by this long Account of what some Men say, in behalf of Parliaments, to have stray'd from my Point : But indeed I have not ; for all this, is, in some Degree, applicable to a Convocation. The Liberties of the Church do, in great measure, run parallel to those of the State ; and Both of them must, according to the Nature and Constitution of our English Government, stand or fall together. It would be needless here to repeat the same Things, with a small Difference of Words, inserting the Convocation instead of the Parliament, and the Church instead of the Realm.

I had rather leave this to be done by You ; and shall add only, that an English Christian King is

as much oblig'd by the Laws and Usages had and accustomed in this Kingdom, in regard to the Church, as the Sovereign of *England* is with relation to the State.

It is, I know, objected commonly in prejudice to the Liberties of a Convocation, that they have oftentimes been commanded by the King's Writ to deal with nothing that concern'd the King's Power or Dignity, his Person, or State, or the State of his Council and Kingdom, in the following Terms--- *quod nullo modo præsumant consilium tenere de aliquibus quæ ad Coronam Regis pertinent, vel quæ personam Regis, vel statum suum vel statum Consilii sui contingunt*: Or, as the Form of other Writs is, *quod nihil attentent in prejudicium Coronæ*: And agen, *ne indicto Consilio quicquid in nostrivel status nostri vel regni nostri prejudicium statuatis vel faciatis*: Several Prohibitions of this kind are mention'd in 2. *Rolls Abridg.* We own it: but what follows from thence? That because by Writ they may be prohibited to meddle with that which doth not concern them, therefore they must not meddle with that which doth concern them, without special Licence? Excellent Reasoning indeed! Now, methinks, the Inference is quite on the other side: That, since these Prohibitions are only to keep them from Excess, and within their just Bounds, it is evidently suppos'd, that they may intermeddle with any other Matter,

without Express License: It is imply'd, that, when assembled, they might act, provided they kept within those Restrictions Limited and Mentioned in those Writs. They cannot indeed invade any Man's Property, nor proceed contrary to the King's Prerogative, Common Law, Statute, or Custom; they cannot do any thing in prejudice of any of these; but still all this supposes, that they are at liberty for Debate in other Matters, not interfering with those Limitations.

But besides, I have this further to add concerning these Writs; they were at first fram'd upon occasion of the suppos'd dependency of the English Church upon that of Rome, and the Clergy's application to the Pope in many cases, which ceasing by the Reformation, methinks, much of the reason of these Writs vanish'd too. And upon this account, I have often thought, that the form of our common Prohibitions directed to ordinary Courts, was very Extravagant: They run, in *Exhereditationem nostram, & contra Coronam nostram*: A Form, for the use of which there is now, I think, no manner of Colour or Reason.

But in the 12th Report, 22. 'tis said, that they cannot conferr nor execute any Canon without the King's License: And it is urg'd to be a Resolution of the Two Chief Justices, and other Judges, at a Committee of the Lords in Parliament,

(8. Jac. ,

(8. *Jac.* 1.) 'Tis true, it is there so said, and so laid down. But this Report is not of the greatest Authority; several Opinions contain'd in it are agreed not to be Law. 'Twas publish'd in a time when the Church was under Persecution, and all its Rights invaded. Besides, this was not the Opinion of these Judges, by way of Judgment, upon any case depending before them; but only by way of Opinion or Advice, before a Committee of the Lords. And if we consult *Coke* himself, we shall find, that what he alledges in Justification of this Opinion of theirs, is by no means satisfactory and concluding. He urges the Prohibitory Writs, which we have already admitted and consider'd. He insists upon the Invalidity of those Canons which oppose the Common-Law or Statute, Customs and Prerogative; and gives Instances of some Canons deem'd and declar'd void upon this account. This, it seems, is the Foundation they went upon; and all that could be pretended in behalf of their Opinion; except only the 25 *Henry* 8. *cap.* 19. which is mightily insisted on. And yet, in the same place, it is agreed to be an Act of Parliament made in affirmation of the Common Law, and, to prove it to be so, the 19 *Edw.* 3. (*titl. quare non admisit.* 7.) is cited; where 'tis held, that if a Canon Law be against the Law of the Realm, the Bishop ought

ought to obey the King according to the Law of the Kingdom: He quotes the 10 of *Henry 7.* 17. and the common Instance of Bastardy, upon which came the *Nolumus Le ges Angliæ mutari.* Further Coke very wisely observes, that before the Act, a *Disme* granted by the Clergy at the Convocation, did not bind the Clergy, till the King's Royal Assens was had, 20. *Hen. 6.* 13. But no more doth the Commons grant of a Subsidy, till the King accept it; tho' it were *per quamdam indenturam sigillo Prolocutoris Communitat. sigillat.* as one of the Lawyers Books of Entries, which I have seen in the Temple, shews it anciently to have been.

This is all that is offer'd in behalf of that Opinion; and I leave it now to any fair and impartial Man to judge, whether it be reasonable and well founded: Especially, considering what has been already alledg'd on the other side in these Papers, and shall be further offer'd in what follows.

It is own'd by these Judges, that this Statute is only an affirmance of the Common-Law; and, if so, then it can never preclude the Convocation from Conferring, Debating, and Resolving without the King's License; because This, at Common-Law, before the making this Statute, was their undoubted Right; and, for any thing I can find to the contrary, in the Statute it self, it is their Right still. The words by which this Right is pretended

tended to be cut off are these: *That they shall not Enact, Promulge, or Execute any Canons or Constitutions, unless they may have the King's License to Enact, Promulge and Execute them.* The plain intent and meaning of which words is, that they shall not presume to make any Ecclesiastical Law or Constitution of themselves, *ex merâ Autoritate propriâ*, without the Royal Concurrence. But does this any ways hinder 'em from Conferring and Debating, and framing the Draughts of Canons before-hand, in order to the King's Confirmation afterwards? *They shall not Enact, Promulge or Execute; Therefore, they shall not consider of what is fit to be Enacted, Promulg'd, or Executed: They shall not do that which is necessary to be done, in order to Enacting, because they shall not Enact: I hope, for the sake of the Profession, that there's no Law, because, I am sure, there is no Sense in this kind of Reasoning.*

The Common Law and Constitution of the Realm is the same in this point, in respect of *Parliaments as Convocations.* Now, suppose a Statute made in these very words, for Parliaments; would it be pretended from thence, that the Lords and Commons might not Debate and Vote, and frame Draughts of Acts without express License? I am confident, that all, which such a Statute would be constru'd to amount to, would be this, that:

that they should not presume to make an Act of Parliament by themselves, without the King : and further than this therefore it cannot be extended in respect of a Convocation.

Should the Convocation Vote a Constitution, and humbly prepare it for the Royal Assent, without a License antecedent, and the King afterwards give His Assent to it, would not a Canon thus made be Lawful and Binding ? undoubtedly it would ; and, if so, then a License to conferr cannot be antecedently necessary.

To what purpose is such a License before-hand to make Canons, since the King's Assent must be had to 'em afterwards, ere they can be Promulg'd ? Does the Act say, that there shall be a *Double* License from the King ? that He shall assent once to the preparing and framing Canons, another time to the Promulging 'em ? Does it mean any more than barely this, that before a Canon can be *Enacted, Promulg'd, or Executed*, the King's Concurrence must be had ? and is not that *had* unless it be given before-hand, and afterwards too ? They must have the King's *License* to Enact, Promulge, and Execute ; that is, (to put a *Latin* word into *English*) they must have His *Leave* ; and have they not His *Leave* amply and effectually, when He joyns *His* Authority to *Theirs*, to make Those, to all intents and purposes, Canons, which before
were

were not so, and could never have been so, unless He had agreed to 'em. A Leave in *general* to make Canons, is given 'em by their very Writ of Summons, and a Leave in *particular* to make This or That Canon, is given 'em when the King assents to this or that particular Canon: And what other Leave beside these can there be imagin'd or desir'd? If all they do, towards making a Canon, before the Royal Assent, comes far short of *Enacting*, *Promulging*, and *Executing*, then it is certain, that they can want no particular License for it: For they are forbid only to *Enact*, *Promulge*, and *Execute*, without License; and therefore they can do Any thing which comes not under any of these restrictive Words, tho' they should have no Leave for it: But now, that to prepare the Draught of a Canon, in order to the King's giving His Assent, is neither to *Enact*, *Promulge*, nor *Execute*, it, I hope there need not many words to prove. It is not to *Promulge* or *Execute* it, that's plain: And it will be as plain, that it is not to *Enact* it neither, when the force of that Word is duly consider'd. To *Enact*, is to give the Authoritative *fiat* to a Law, by which it becomes Obligatory; in this sence the Word is constantly taken in our Acts of Parliament. But does the Convocation do any thing of this kind, when they prepare a Canon for the Assent Royal? Do they pretend (or

can they be constru'd to pretend) by any thing of *Theirs*, that goes before that Assent, to make a Canon, which shall be a Law of the Realm, and binding? No body will say it: And therefore, if All They do before they offer a Canon to the King, in order to His Assent, rise not up to Enacting, 'tis plain, that they want no License for it.

I am asham'd to have dwelt so long on so plain a Point; but 'tis the only Pretence of Law, that our Adversaries have on their side; and therefore I was willing to give it a nice and particular Examination.

I shall add only to what has been offer'd in this Case one Argument, which *Coke* himself has (against his Will) furnish'd me with. He says (in the fourth of his *Institutes* 323.) that the King did often appoint Commissioners to sit in Convocation, and take notice of such things as they meant to establish, that nothing might be done in Prejudice to the Crown. *Quo Jure* this was done, doth not appear: But however it proves, that They had Liberty of Conferring and Debating; for if nothing could be discuss'd, but what they had Express License for, there could have been no occasion for such a Practice. And if this were so, at Common Law, before the Statute of *Henry* the Eighth, it must continue so still; for the Statute

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(as we have seen) has left their Liberty of Debate and Conference just as it found it.

But, Sir, whatever Restraints may be pretend-
ed to be laid upon 'em, by this Act, with regard
to the making of *Laws* and Constitutions, yet the
Exercise of their *Jurisdiction*, as they are a
Court properly so call'd, is certainly left free and
entire to 'em. Their Power of proceeding against
any Bishop, Priest, or Deacon, for Heresie, or
Schism, or any other Spiritual Offence, is not in
the least restrain'd or touch'd by this Act;
or by any other Act of Parliament whatsoe-
ver.

And now, Sir, though I have, I think suffici-
ently answer'd Your *Second* Question, and shewn
what Right a Convocation has to Meet, Sit and
Act, by the *Laws* of this Realm; yet I shall, *ex*
abundanti, throw You in a Reflection or two, to
the same purpose, from *Magna Charta*, and the
Coronation-Oath, Two Oracles, which in Claims of
Right, should by no means be left uncon-
sulted.

Let us consider *Magna Charta*, for which the
People of *England* have so often contended, even
to Blood; and which has been forty times con-
firm'd by Parliament; and is own'd by every
English-man to be only a Royal Publication of the
Common-Law: It pronounces *quod Ecclesia Anglicana*

Libera sit, that the Church of England shall be free. Now This surely, in the strictest meaning of the Word, implies a Liberty of doing all that is requisite for a Church to do, and of using all its necessary Powers and Jurisdiction. 'Tis said *Ecclesia Anglicana*, which imports a National Church; and to a National Church it is certainly incident to have National Synods; or Convocations; and in like manner, to those Synods to have Freedom of Speech and Debate, about Matters proper for their Cognisance, relating to the Being, or well-being of their Body, as a Church.

Thus to be allow'd to act and do, is to be a Free Church; and therefore This Priviledge must be included in the Words of *Magna Charta*; or else they signifie nothing: especially, if we take in the Explanatory Words that immediately follow there, *Et habeat omnia Jura sua Integra, & Libertates illas*; i. e. and shall have all her Rights intire, and her Liberties untouch'd. And I think, if the Church of England has any Rights, Priviledges, or Liberties, as a Church, This, we contend for, is One, and the First of 'em.

That it is so, You, Sir, can argue better than I from the very Form and Being of a Church: I confine my self purely to an account of what the Law lays in the Case: And as to That, if you want farther Satisfaction, I refer You to *Coke's Institutes*,

stitutes, *Lynwood*, and *Prydeaux's Synopsis of Councils* : Look there, and You will find Evidence abundantly enough to convince You, that the Law takes notice of this as one of the Chief and Undoubted Priviledges of the Church of *England*. I would recommend to your Perusal too *Cotton's Abridgment of Records*, where You will find the concurrent sitting of a Convocation with that of a Parliament plainly prov'd : I have not Time to instance in Particulars, nor is this a Place proper for it.

But the *Coronation-Oath* must not be forgotten. It was fram'd and establish'd by the *Convention-Parliament*, 1688. In it the *Archbishop*, or *Bishop* says, *Will You solemnly Promise and Swear, to govern this people of England, and the Dominions thereunto belonging, according to the Statutes that Parliament agreed on, and the Laws and Customs of the same ?* The King answers, *I do solemnly promise so to do.* It is then farther said by the Bishop, *Will You to the utmost of Your Power maintain the Laws of God, the True Profession of the Gospel, and the Protestant Reform'd Religion Establish'd by Law ? And will You preserve to the Bishops and Clergy of this Realm, and to the Churches committed to their Charge, all such Rights and Priviledges as by Law do or shall appertain to Them or any of Them ?* The King's Answer was, *All this I promise to do.* And, then, laying his Hands on the Holy Gospels, he said, *Things which I have here before*
promis'd,

promis'd, I will perform and keep; so help me, God. And then he kiss'd the Book. Now these Words are plain and certain, and can have no doubtful meaning: The People of *England* are to be govern'd according to the Laws and Customs of the Realm; and those are known: The Protestant Reform'd Religion establish'd by Law, is to be maintain'd: And that is, as Profess'd in the Church of *England*; for no other was then indulg'd, much less establish'd. The Bishops and Clergy of the Realm are to have all their Rights and Priviledges preserv'd: This too, for the same Reason, is to be understood of the Church of *England*, and of *Her* Bishops and Clergy; and answers exactly to that Passage in *Magna Charta* just now produc'd, concerning the *Jura & Libertates Ecclesie Anglicanæ*; which, in this Clause of the Coronation-Oath, is directly English'd: And therefore what I said in That Case, I say again in This, that if the Church of *England* have any Rights, or Priviledges, this of Assembling, Debating, and Conferring, is certainly One and the Chief of em.

It would be needless, after this Account of the *Coronation-Oath*, which obliges His Majesty, as *King*, to produce the *Declaration* he made while Prince of *Orange*; or the Unanimous Opinion of the Great Men and Commonalty of the Realm, who first declar'd for Him. Both This and That were plainly

plainly directed at the Preservation of This Church, and Her Rights; of These Bishops, and Their Clergy; and the several Priviledges belonging, in Common, or in particular to em.

You may make what Inferences, You please, from hence, as to the disuse of Convocations under the Last *Archbishop*; we are sure His most Sacred Majesty did never oppose their Sitting and Acting.

Thus, Sir, I have given You my Opinion at large concerning the *Second Point* propos'd; and now that is done, the *Third* will gives us no Trouble. For, to your *Last Question*, *Of what Force and Validity Canons fram'd by the King and Convocation are?* I answer, in a Word, that they need no Confirmation of, or by the Parliament, provided they do not impugn Common Law, Statutes, Customs, or Prerogative. *Smyth* and *Bird's Case*, in *Sir Francis Moor's Reports*, is plain and full to this purpose; where the then Lord Chancellor, *Popham* Chief Justice, and Chief Justice *Cook*, (no Great Bigot for Religion, or the Power of the Church) and *Fleming* Chief Baron, magnifie the Usefulness and Necessity of the Ecclesiastical Laws; and, in the third place, have resolv'd, that the Canons of the Church made by the Convocation and the King, without Parliament, shall bind in all Matters Ecclesiastical as well as an Act of Parliament.

liament. They allow, that the Convocation of the Clergy was once a Member of the Parliament of this Realm, but afterwards, for its Ease, severed; and yet carried its peculiar Function with it into the Convocation-House. And Coke says, that 'twas resolv'd 21 Hen. 8. by both Houses, upon Conference together, that, when the Convocation makes Canons, appertaining to them, and the King confirms them, they shall bind All the Realm, Moor 782. 783. And according to this is a little Report, which goes under the name of Noy. 100. Hill. 2. Jac. 1. Where, before many Noblemen, Archbishops, and Bishops, and the Justices, and Barons of the Exchequer, it was held and agreed, that the King, *without Parliament*, (and by that they must mean, *in Convocation*) may make Constitutions for the Government of the Clergy. And the Books quoted against our Notion, as 21 Edw. 4. 45. and 20 Hen. 6. 13. acknowledge, that they bind the Clergy, tho' not the Laity, without Parliament. Whatever those Books say, I, for my part, can see no Reason, why, in Things of a Spiritual Nature, the Rules of a Convocation should not oblige Us, as Our Acts of Parliaments, in Things of a Temporal Nature, oblige Them 'Tis not my Province to argue how far they oblige us in *Foro Conscientiæ*: Only this I must say, that though the *Common-Law-Religion*,

Religion, which was *Paganism*, knows nothing of the Validity of such Canons, made by our Ecclesiastical Rulers under a Religious Prince, yet the Christian Common Lawyer, who owns himself a Member of the Church of *England*, according to the Laws of his Country, must and will reverence them as Obligatory.

The Canons of an *English* Convocation would, I am sure, claim a particular Regard from us, now, upon the Account of those Persons, who chuse and compose it. They are, at this day, I am perswaded, the best, for their Number, of any Clergy in this, or any other Kingdom in the whole Christian World; 'tis a bold Word, but a True One, considering either their Parts, Learning, Vertue, or Piety. I pretend not to justify every Particular Person, but desire any Man to shew me a Number like them, in any Profession or Science whatsoever; which so much have answer'd the Ends of their Institution, and are so great an Honour to their Calling. So that, in truth, We of this Age have no Reason to decry that Gown: 'Tis Venerable in it self; and the Men, who now wear it, do in a very particular manner deserve our respect, either as We are *English-men* or Christians: 'Tis both Our Interest and Our Duty to support their Honour, unless we resolve to turn all Religion out of the Kingdom:

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And

And this is a Truth, which the most considering of their Enemies must see and acknowledge.

To their Eternal Honour, it must be own'd, that in the last Reign they stood up in the Defence of the Laws and Liberties of their Country, resolutely and bravely : And 'tis pity, methinks, but that those Laws, which they so well defended, should now protect and defend Them also in their Turn. They should have their share, at least, in those Liberties, which they then did more than their share to preserve : They ought certainly to enjoy to the full all the Priviledges they formerly had, if we think not fit to give 'em New Ones : This they may honestly expect at our Hands, upon the score of past Services.

My Lords the *Bishops* indeed, by reason of their high Station in the House of Peers, and the great Business, which on that account their Hands are full of, may not miss their Seat in a Convocation-House : But the Inferior Clergy, the Priests, who are in no other Capacity of serving the Church and Kingdom, to purpose, but as assembled in Synod, are at leisure to reflect often on the Neglect with which they are us'd, and the Methods that are taking of making 'em useless. They are, thô under the Bishops, a Considerable Member of the Ecclesiastical State. No Canon can be made without their Assent ; and if the Canons are not observ'd

observ'd as they should be, they have a Right to complain of the Default, and to move for a Redress; and not to be suffer'd to do this, at a Time, when there is so much need of it; and when the Rights of all other Bodies are so tenderly preserv'd, They think to be a very Great and Design'd Hardship upon em.

There was a Time, indeed, when the Clergy was deem'd Publick Enemies, and us'd as such; (*viz.* in the Reign of *Edw. 1.*) but it was upon a very honourable Account, because they asserted the Laws of the Realm. The King at that time did, by Commission, against the Ancient Laws and Customs of the Kingdom, pretend to collect Money without the Assent of Parliament, not from the Clergy only, but from the Earls, Barons, and Commonalty of the Realm. The latter did too many of them submit, the Clergy stoutly resisted it: So that Sir *Robert Brabazon*, the King's Chief Justice, pronounced openly in the King's Bench (*in terrorem*) that from thenceforth no Justice should be done at their Suit; and that Justice should be done against them in the King's Courts at any Man's Suit. This Passage I mark'd when I first read *the Institutes*, as a very extraordinary one (*tis pag. 529. 2 Inst.*) I suppose You will think it so too, and that *England* was then bless'd with a Righteous Chief Justice!

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The Place, God be thanked, is now a little better fill'd with One, whose Justice the Clergy may certainly depend upon, if not upon his *Favour*. While *He* presides in that Court, they are safe: And it is to be hop'd, that the same good Providence that brought him thither, will upon his removal (whenever it shall happen) prevent any *Brabazon*, or Enemy of our Religion and Church from succeeding him.

Thus, Sir, I have given Your Three Questions the Answer I promis'd: I am sensible, upon a Review of this Letter that 'tis a little of the longest either for Your or a more Publick Use; but You know I have a Right to *Monsieur Paschal's* Excuse in the Case; and may truly say as He did, that I have not Time to make it shorter. I am,

SIR,

Your most Obedient,

Humble Servant.

F I N I S.

A
L E T T E R
T O A
Member of Parliament ;

Occasioned by a

L E T T E R
T O A
Convocation = Man,

Concerning the
Rights, Powers, and Privileges of that Body.

Together with

An Inquiry into the Ecclesiastical Power of the University of Oxford, particularly to Decree and Declare Heresy, occasioned by that Letter.

[William Wright]

L O N D O N :

Printed for W. Rogers, at the Sun against St. Dunstan's
Church in Fleetstreet. MDCXCVII.

LETTER

TO

Member of Parliament

Occasioned by

LETTER

TO A

Constitution

Concerning the

Rights, Powers, and Privileges of that Body.

Together with

An Inquiry into the Ecclesiastical Power of the University of Oxford, particularly as to Decree and Election, occasioned by that Letter.

L O N D O N :

Printed for W. Rogers, at the Sun against St. Dunstons Church in Fleetstreet. MDCXCVII.

A LETTER to a Member of Parliament, &c.

S I R,



Although it is a very ungrateful Work to censure other Men's Labours, and he ought to be well assured that goes about it; yet since you are pleased to command my Thoughts of the late *Letter to a Convocation-Man*, which you say is a *Plausible Pamphlet*: I shall, without making any Apology, or troubling you with any General Reflections upon that Letter, proceed to comply with your Desire. The Author hath stated Three Questions; which he hath made the Subject of his Letter. 1. *What Occasion there is at present for a Convocation?* 2. *What Law there is that Commands or Permits their Sitting and Acting, but the absolute free Pleasure of the Prince?* 3. *Of what Validity their Acts and Resolutions are, unless Confirmed and Approved by Parliament?* I shall follow the Author in his own Method, and first consider with him, *What Occasion there is at present for a Convocation.*

Whether we consider the Convocation as a Court, for the making Laws in Ecclesiastical Matters, or as a Court properly so called, having Jurisdiction in respect of Crimes Ecclesiastical, I think their Assembling in either Capacity is not at present necessary.

I shall not deny that they are a Court, and have Jurisdiction in Ecclesiastical Causes; for besides the Authority of my Lord Coke, cited by the Author, it appears by unquestionable Authority, 32 H. 8. they held a Plea in a

Letter, page 35, and p. 40.

4 Inst. 322. Letter 36.

Cause of Divorce, and declared the Marriage of that King with *Anne of Cleve* to be Null and Void : You may see a Copy of the Sentence amongst the Records at the End of the First Part of the *History of the Reformation*, &c. And although that most Exact and Incomparable Work doth censure this Act, As the grossest Piece of Compliance that the King had from his Clergy in his whole Reign ; yet doth it not find Fault, That they usurped a Jurisdiction which did not belong to them. But the Rare Exercise of this Jurisdiction is a great Evidence to me, That it is not of much Necessity or Use ; for since that Sentence, 32 H. 8. I cannot find, upon the best Search I can make, that they have done any one Judicial Act ; The Spiritual Courts, since that Time, have had as much Employment as ever they had since Christianity was first preached in *England* ; almost every Consistory Court had a share in the Cruelties which were acted upon the Blessed Martyrs in *Queen Mary's* Time, and yet the Convocation had no Exercise of their Jurisdiction in all that Tragedy : Their Rest at that time cannot be imputed to their want of Opportunity or Zeal ; for they met frequently in that *Queen's* Time ; and most of the Bishops, who composed the Upper House, did in their own Courts give good Testimony of their Approbation of those Proceedings.

It had been as Vain then, as it would be now, to make use of an Extraordinary and Unusual Jurisdiction, when the Ordinary was sufficient ; for a Convocation, as a Court, hath no other nor larger Jurisdiction than every Ordinary hath in his Diocess, but is confined to the same Rules and Measures of Law and Justice, as they are : For, admitting that a Convocation hath Power to declare new Opinions Heresy ; yet when they have *Subjectam Personam* before them in Judgment, they are bound to proceed according to the Law, as it stands then declared, and cannot *ex*

post.

post-facto declare an Opinion heretical, and then proceed against the Party as an Heretick, for an Opinion not declared Heresie at the Time when he was guilty of it; and as the Convocation is but equal in Power with other Ecclesiastical Courts, in respect of the Law they are to judge by; so is it as a Court no way superior to them. That which denominates one Court superior to another, is a Power invested in them by Law, to examine the Sentences and Judgments of those which are inferior: In that Sense the Courts at *Westminster* are superior Courts; and in that Sense the House of Peers is the supreme Court of Judicature in *England*: But the Convocation hath no Power to receive Appeals, or to examine the Proceedings of Ecclesiastical Courts; that Power is lodged elsewhere by our Constitution: Therefore in this respect, *viz.* as it is a Court having Jurisdiction, *A Convocation is not the highest and most supreme Ecclesiastical Court in England.* But the Author seems aware of the Force of this Argument, That a Convocation is useless in respect of their Jurisdiction; and therefore hath pickt up an Instance out of *Fitzherbert's Natura Brevium*, wherein the Ordinary had no Jurisdiction before 2 *H. 4. Cap. 15.* for he saith, That Statute first enabled the Ordinary to convict of Heresy; and from thence he infers, That anciently a Convocation was necessary, because without it there could be no Punishment of Heresy. If I should admit this Objection as stated, I cannot see what Inference the Author can draw from it; would he argue, Because there was need of a Convocation when Heresy could not be punished without it, therefore there is occasion for one now, when Heresy may be corrected without it? I need not expose this Conclusion; but this Opinion of *Fitzherbert*, and which is also cited by Sir *Edward Coke*, in *Cawdry's Case*, is hardly Law. I shall not maintain this upon my own Authority, but shall take the Liberty to transcribe the Words of the Great and Learned

Letter, p. 29.

*Fitzher. Nat.
brev. 269.
Letter, p. 36.*

Learned Author of the *Discourse concerning the Illegality of the late Ecclesiastical Commission*, page 24. It is evident by the *Act* it self, viz. 2 H. 4. C. 15. That the *Spiritual Jurisdiction* was left wholly to the Ordinaries, and only an *Inforcement* of it by the *Civil Power* was added by the *Law* then made; for the Words are, *Whereas the Diocesans of the said Realm cannot by their Jurisdiction Spiritual, without Aid of the Royal Majesty, sufficiently correct, &c. therefore a Power to Imprison and Fine was given the Ordinaries; who might have proceeded by Ecclesiastical Censures; but those being contemned by them, the Ordinaries called in the Assistance of the Civil Power.* Thus far that Author: And of the same Opinion were Dr. *Cosins* and Father *Parsons*; I chuse to mention that Father, because it will appear presently that our Author hath a peculiar Respect for his Judgment.

Apol. part 2.
cap. 13
Parsons Answ.
ad 5. rep. p.
346.

I suppose I have said enough to satisfy you, That there is no need of a Convocation, as it is a Court having Jurisdiction; and I shall endeavour to make it as clear, That there is as little Occasion for them, if they were (as the Author fancies) an Assembly for making Laws in Ecclesiastical Matters.

Letter, p. 35.

From several Vices and Corrupt Opinions and Practices, which the Author hath enumerated, he concludes; *If ever there was need of a Convocation since Christianity was established in this Kingdom, there is need of one now.* He might with more Reason have concluded, That there was never more Occasion to put the Laws in Execution against Vice, than at this Time: For it were easy to prove, That every one of those Instances, so far as by any Construction they can be supposed Criminal, are punishable by the ordinary Course of Justice, without recurring to any extraordinary Jurisdiction. If by Heresies (the Progress and Growth whereof the Author seems most to fear) he means such Opinions as are already declared so, I have shewed you, that they are punishable in the ordinary Ecclesiastical Courts;

Letter, p. 2.

but

but if the Author wants a Convocation, only to consecrate the Opinions of some Doctor, and to receive them into the Articles of our Christian Faith, that Desire seems Carnal, and calculated only to gratifie the Pride and Ambition of a few Men, or a Party; and can never serve to a Religious End, or promote any Publick Good.

Our Church hath already declared it self in as many Articles of Faith, as God Almighty hath revealed necessary to our Salvation; and I know no Power upon Earth to whom he hath given Commission to impose any other Conditions of Salvation, than are published in the Gospel; there are several Places in Scripture which serve only to humble the Learned; and the certain Knowledge of them must be sealed up until the End of all things. The Learned Mr. Chillingworth saith; *There is no necessity we should be certain of the meaning of Obscure and Difficult Places in Scripture; for if God's Will had been we should have understood him more certainly, he would have spoken more plainly. And again, if our Saviour, the King of Heaven, had intended that all Controversies in Religion should be by some visible Judge finally determined, who can doubt, but in plain Terms he would have expressed himself about this matter?* Let not then Philosophical Niceties be adopted into our Religion, we have no need of Skill in the Languages of the Bible, nor have we any occasion to be Masters of all the Learning of the Fathers, or of the History of the Primitive Church, to make the Way to Salvation more Plain and Evident; the Scriptures have revealed plainly all that is necessary to Salvation; and the curious Enquiries, which are beyond that, serve only to amaze and puzzle us, and to make the Way more Dark and Obscure; the learned Members of a Convocation may more usefully spend their Time, in doing their Duties in their respective Stations: Let them bring back the Sinner, and by their Examples, as well as Counsel, let them Teach, and Instruct, and Reform Mankind; and

Relig of Protestants, &c.
p. 83. p. 61.

Letter, p. 15.

and then they will have no cause to lament the want of a Convocation.

Letter, p. 3.

But if a Convocation cannot give a check to the further proceeding of these loose and pernicious Opinions, yet the Author saith, there is need of one at least to remove the Scandal, which their growth and impunity have brought upon this Church and Nation. Every Church speaks, and is distinguished by its Articles, and not by the Opinions of private Men ; if this were a Reason for a Convocation, then no Age nor Place would be free from this necessity : Vice and Profaneness have prevailed in all times, in every Christian Church ; yet no Man ever called for a Synod of the Church, to declare that they did not assent to those Corruptions. In the Reign of the late King *Charles the First*, when *Dr. Mountague* advanced several *Arminian* Opinions contrary to the Judgment of all the Reformed Churches, and the Articles of the Church of *England*, and took the liberty to dedicate his Book to the King ; he was pursued by most of the Learned Divines of those times ; and although his Opinion had great Abettors, yet I do not remember that any of those who wrote against him, called for a Convocation to justify the Church : It was sufficient that the Church had before declared her self in that respect ; this was always taken to be a good Apology for our Church against the Dissenters, who were used to urge the Scandalous Lives of some of its Members, for a Reason of their Separation. Our Church most holy, pure, and without blemish, needs no declaration of her Doctrine ; and if the present Establishment of the Church will not justify us, no more will a Vote of a Convocation, which may perhaps be obtained by Art, or Faction, and discredit the Church.

Letter, p. 4,
and 5.

But we are called upon by some of the Reformed Churches abroad to clear our selves ; and we ought to imitate the Walloon Churches, who in a Synod have condemned several Propositions as false, scandalous, and pernicious. For the *Walloon Churches*,

Churches, probably they had not declared themselves before concerning those Propositions : And for those who call upon us from abroad, we may send them a Copy of our Articles, and our Liturgy, and then leave them to judge what occasion there is for any further Declaration.

The Author discovers a good Opinion of a Convocation, when he saith, *Their Opinion is necessary to preserve the belief of any Revelation; and that the Inferences which have been made from several Books mentioned in his Letter, do command their Declaration that there is a Religion enjoined by Heaven.* Surely if the Declaration of the whole Catholick Church, and the constant and uniform belief of the Christians in all Ages, cannot support the Credit of Revealed Religion, neither shall we be persuaded by a Convocation. Letter, p. 7.

Can the Opinion of Men, whose Frailties we know, and whose Passions we feel, convince more, than those glorious Witnesses, those Armies of *Saints and Martyrs*, who have offered up their Lives for the Testimony of the Religion enjoind by Heaven?

I shall not trouble you with any account of the Books intended by the Letter, nor of the Authors of them; to give a Character of the Author of *the Reasonableness of Christianity*, would be to eclipse his Merit; his Works express the greatness of his Mind, and place him as much out of the Reach, as he really is above the Capacity of some Writers who snarl at him: And as for the Author of *the Vindication of the Holy and Ever-Blessed Trinity*, &c. he wants no Apology which I can make for him; the uncharitable Fury which hath pursued him, hath wounded Religion more, than any Inferences which can be forced from his Works: It is strange that men, even when they are disputing about the Articles of Faith, should forget all Charity, and the Precepts of that holy Religion, which they would be thought so earnestly to contend for. I wish they

who have thus treated that Worthy Author, had seriously considered his Books of Practical Divinity; as they might have put them into a better temper, so would they have admonished them, not to use him thus, to whom the World is so much beholden.

This Temper of the Age, and that furious Spirit which prevails amongst us, doth afford me a good Argument against the Necessity of a Convocation at this time; for if Controversies in Religion have been managed at a distance with so much heat, and bitterness; when the Parties with their respective Abettors meet in a publick Assembly, what can we expect, but Factions, and Tumults, and breach of the publick Peace? This may seem a very uncharitable Supposition, but I desire you to give me leave to put you in mind of the Temper and Proceedings of the Convocation which sat with the first Parliament of His present Majesty.

Letter to a
Dissenter.

The Bishops
Petition.

During the Reign of the late King *James*, the best and most moderate Divines of the Church of *England*, had given great reason to the Protestant Dissenters, to believe that they were willing to enlarge their Foundations; His Majesty thinking they were in earnest, did in the first Year of His Reign (after the Example of King *Edward* the Sixth, and other Protestant Princes since the Reformation) authorise a certain number of the most Eminent Divines of the Church of *England*, to consider what Concessions were fit to be made to the Dissenters; what progress they made, I know not, but care was soon taken to shew that their Consultations were vain; for shortly after the Parliament and Convocation being to meet, the Alarm was industriously given, that the Church was beset; and intimation was made to all parts, to send up those who had most Zeal for the Church; you cannot forget with what faction the choice of the Prolocutor was contested, and with how much zeal all thoughts of condescension were discouraged and stifled

stified at the opening of that Assembly; it was easily discovered how little was to be expected from them, when the Person who presented the Prolocutor to the Upper House, told them plainly, *Nolumus Leges Anglia mutari*. The Heats of those few days in Convocation have had a very bad influence upon His Majesty's Affairs ever since; from thence we may date those Jealousies which have been unjustly propagated of His Majesty, and which this Letter doth too much favour of; from that time marks of distinction have prevailed, and His Majesty's best Friends have been represented as the most inveterate Enemies of the Church. It was no doubt from the greatest Consideration and Experience, that that Excellent Person, the late Archbishop, was induced to say, That *he never knew any good to come from such Meetings*. Many of the Primitive Fathers of our Church have said as much; and the same thing in effect is affirmed by my Lord Bishop of Worcester, in his most Compleat and Incomparable *Irenicum*, cap. 8. where speaking of an Assembly of Select Divines convened by King Edward the Sixth, at Windsor, to debate the Settlement of Religion, he saith, All the Divines gave in their Resolutions in Papers to the Questions propounded, with their Names subscribed; a far more prudent way (saith the Bishop) than the confusion of verbal, and tedious Disputes. And if an Assembly composed of not more than Twenty, and many of them Bishops, might be subject to Confusion, what can we expect less from a Convocation?

Letter, p. 8.

I know not whether I ought to beg your Pardon for this Digression; but I shall proceed to consider how well the Author hath answered his own Objections to the necessity of a Convocation.

I have already endeavoured to shew, and I hope sufficiently, That a Convocation, as a Court, hath no other Jurisdiction than every Ordinary in his Diocese may lawfully exercise; and that the Proceedings of the Ordinary are as

Letter, p. 10.

much according to Law, and supported by it, as the Acts of a Convocation; The Discouragements which the Noble Prelate (whom the Author mentions) met with, were not in his Proceedings as Ordinary; nor are the Trophies erected to his Lordship for his Victory over a certain Doctor, to be imputed to the Regularity of his Proceedings, but to the want of Authority to examine them. His Lordship acting as Visitor of a Private College, was the final Judge; his Sentence, be it just or not, must be conclusive: So that tho' by Law the Doctor was left without Remedy, yet he might not be without just Cause of Complaint. The Doctor was never sentenced, nor convened for Heresy. Contumacy was the Crime alledged; and that is made the Pretence to continue several worthy Men of that Society yet suspended from the Benefits of their Fellowships, and almost in Want. But the Author is not more complainant to one Bishop than he is rude and unmannerly to another, because he will not put himself into a Party, and follow the Multitude in their Fury. Give me leave to consider the Exception he takes to that other Bishop: *He suffers a Person Excommunicated by the Bishop, and solemnly Condemned by the University for notorious Heresy, to enjoy a Living, with Cure of Souls, untouched, and even unquestioned.* Thanks be to that wise Parliament which took away the Writ *De Heretico comburendo*, otherwise, no doubt, it had been part of this Bishop's Charge, that the Man is suffered to live. They who live under this Good Bishop's Care, have reason to thank God that his Lordship hath no boisterous Passions, nor any Affection for Arbitrary Government; he governs them as a Father, and will not be infected by the Heat and Violence of his Neighbourhood. But his Lordship *suffers a Person Excommunicated, &c.* Indeed the other Bishop did pronounce the Doctor Excommunicated; but that was an Invasion upon his Lordship's Power, as Ordinary, as well as an Incroachment upon

Mr. Kirman,
&c.

Letter, p. 10.

upon the Chancellor of the University; and by the Opinion of the whole Court of *King's Bench* was declared Null and Void. But he suffers a Person, who stands solemnly Condemned by the University for Heresy, &c.

I can scarce believe the Author to be so much a Stranger to the Affairs of that University, as not to know that he is mistaken: The Doctor was never condemned for Heresy. 'Tis true, when the Bishop resolved to visit the Doctor's College, way was made for him, by representing the Doctor as Odious and Contemptible as might be; and to set off his Lordship's Severity, the University were made Parties, and engaged to cry out for Justice against *the Naked Gospel*, which had lived in Peace, and without Censure, at least Ten Months before: But then, all on a sudden, the Book was to be Condemned; and to this End a Convocation was called, and several Propositions, collected out of the Book, were read in the Convocation-House; and tho' not heard by half the Company, yet they were unanimously Condemned, as Heretical, and immediately, with general Acclamations, the Book was Burnt. But I must observe, That the Decree, or any of the Proceedings, did not mention the Doctor, or so much as declare the Author of the Book (whoever he was) to be guilty of Heresy: But admitting the University had Condemned the Doctor of Heresy, what Use could the Bishop make of it? Can his Lordship take notice of their Decree, or proceed upon it? Or are all Ecclesiastical Judges bound to observe their Decrees as Laws, and make them the Rule and Measure of their Proceedings? God forbid that Bishops should carry the Heats of that Place into their Consistories; or that the most awful and tremendous Censures of the Church should be directed by the Passions of Violent and Unreasonable Men. You will hardly believe, That the Proceedings against that Doctor should be encouraged by the University, and that they should conceive it their Privilege, to
be

be without the Relief of *Westminster-Hall*; they will some time or other think it adviseable to address the Parliament for a Law, To deliver them from that Priviledge, and to exchange it for the Benefit of *Magna Charta*. As the Law stands now, their Possessions are very precarious, and subject to the absolute Power of their Visitors; who are bound to observe no Laws or Statutes, no Rules or Measures in Judgment. King James, by securing Three or Four Bishops, might, without Violation of Law, have made himself Master of most of the Colleges in both Universities.

Letter, p. 11.

Our Author, in the next Place, is apprehensive, That the Authority of the Universities will be objected, to shew that there is no need of a Convocation; but that, he saith, as to the coercive part of it, extends only to their own Members; and was not sufficient to restrain one single Person in one of them; and if the Congregation de Propaganda Infidelitate, should send that warm Missionary thither again, all they can do, is to hinder him from holding Commerce with any of her Members, or from entering into any of her Libraries; and this she will do, if even he presumes to fix himself there again.

The Author warily restrains the Imperfection of the Power of the Universities, to the Coercive part of it; lest otherwise he might seem to impeach the Legislative Power of those Bodies; for the Decrees passed at Oxford in Convocation, 27 July 1683, 19 August 1690. and the Decree of the Heads of Houses; 25 November 1695. do argue as much Power in that University, to Declare, Censure and Determine Heresy, as this Author would now lodge in a Convocation. But we have no need to recur to the Power of the Universities; and therefore I shall not concern myself with the Objection taken from their Authority. But because you seem particularly to desire my Thoughts concerning those Decrees, and the Power of that University in

Eccle-

Ecclesiastical Matters, I will in the Close of this Letter say something upon that Subject.

The Author proceeds, in answer to the other Objections, which he fancies will be promoted against the Necessity of a Convocation; to shew that neither *His Majesty*, by virtue of His Supremacy, nor an *Act of Parliament*, can redress the Grievances, which now in his Judgment call for a Convocation. To this Assertion I might only oppose the Injunction of all our Kings since the Reformation, and those Laws which have been made in all Times in Matters concerning Religion, and the State of the Church. They who least favour the Supremacy, do allow that the Prince hath the Charge of the Church as well as the State; that he is *Custos utriusque Tabulae*, and ought to maintain Religion, and keep all Persons, as well Ecclesiastical as Civil, within the Bounds of their Duty. And the Committee of Religion, which is very ancient, is an Evidence that Parliaments are not unconcerned in the Affairs of the Church: But, the Author saith, nothing hath been done by that Committee since the Revolution. 'Tis a good sign that the State of Religion is not so desperate, nor its Grievances so great as our Author represents them: For that Religious and Wise Assembly can never be supposed to forget that, which is the Concern of all States, and the support of every Government.

Letter, p. 12,
14.

Letter, p. 14.

Letter, p. 15.

But Relief by Parliament is in the Nature of the Thing Improper: Country Gentlemen, Merchants or Lawyers are not to be supposed nicely skill'd in the Language of the Bible, Masters of all the Learning of the Fathers, or of the History of the Primitive Church; besides, the Bishops Concurrency to a Vote in Parliament, is not necessary, their Calling there is upon another Principle, viz. by reason of their Baronies. I will not enter into an Enquiry upon what account the Bishops are called to Parliaments, whether by reason of their Baronies, or as they are one of the Three Estates, and represent the Clergy.

Clergy of England; it is enough that they sit there, and if the Country Gentlemen, Merchants and Lawyers must not be supposed to have that Skill and Learning which the Author requires in one who is to judge in Church Affairs, yet I hope it is not too much to suppose my Lords the Bishops to be accomplished with those Endowments.

Parliaments, without the Concurrence of a Convocation have determined the Question concerning the Lawfulness of Priests Marriage; they have declared Heresy, established Uniformity in Prayer, and as Sir Edward Coke observes, *They have made Acts in Causes Ecclesiastical, for the Honour of God, the Advancement of Divine Worship, for the Instruction of God's People, and Maintenance of Works of Piety, and the like.* For, *Reges qui seruiunt Deo, faciunt Leges pro Deo.*

Bishop of
Oxon's Rea-
sons for abro-
gating the
Test.

The Act, 1 Eliz. cap. 2. gave the Queen Power, with the Advice of the Metropolitan, to ordain further Ceremonies and Rites for the Advancement of God's Glory, the Edifying of his Church, and due Reverence of Christ's Holy Mysteries and Sacraments. The Act 1 E. 6. cap. 1. very learnedly argued and determined the Question concerning Communion in One Kind: And the Act 25 and 30 Car. 2. which established the Tests, took upon them to determine very nice and curious Questions, without the Assistance or Concurrence of a Convocation; and yet I never heard that any of the Clergy (except Bishop Parker) complained, That the Parliament had done more than became them: Indeed one of the Reasons urged by that Bishop, for the Repeal of the Test, was, Because it was enacted by an incompetent Authority; but his Brethren thought him neither the Wiser nor the Honester for it; and I dare say this Author then thought that Reason had no Weight in it.

Letter, p. 15.

But the Author saith, *That the ascribing such Power to either of the Two Houses, or to both of them together, is to confirm the Ground of the Papists' Cavils at our Reformation;*
when

when they say, That our Religion is meerly Parliamentary, and changeable at the Will of the Prince, and of the majority of the Peers and Commons; which there is no worthy Member of either House, but will reject with Disdain. If we should maintain thus much, we should have the Authority of the great Mr. Hooker to defend us in it: Who asserts, That the altering Religion, and making Ecclesiastical Laws, do belong unto the Power of Dominion, and are termed amongst the Deeds of the King. This Power which Authors ascribe to the King, is to be determined by the Laws of the Kingdom; and is not to be intended to rest singly in the King in those respects, which by our Constitution ought to be determined in Parliament. It is sufficient for my purpose, if they mean by the King, the Christian Temporal Magistrate who is to exercise that Power according to the Laws of his Country.

Ecclef. Polit.
lib. 8.

The blessed Martyrs, who sealed the Reformation with their Blood, thought it was not dishonoured by being Parliamentary: But however the Papists cavil at our Reformation, it becomes not us that are Protestants to expose it. And yet even the Pope, who Claims the Supremacy as a Prerogative immediately derived from God himself, was contented to accept of a Confirmation of this Right by Act of Parliament: Nay all his Dispensations, 1 M. were ratified in Parliament. Before the Conquest, Ecclesiastical Jurisdiction; in all extraordinary Cases, was dispatched in Parliamentary Assemblies; and tho' the Pope's Power gained ground since, yet every King's Reign affords us Laws in Ecclesiastical Matters; and no Canons, either Foreign or Domestick, were in Force here, but as they were received and submitted to by the People of *England*, and by their Consent and Acceptance became Laws.

I shall not say any thing in this Place to the Qualifications required by the Author, in those who are to judge of Religious Doctrines; I think I have said something

before, which may supply what might be thought necessary here.

Letter, p. 17. But the Author carries his Argument against the Power of the Parliament yet further; and under Pretence of shewing, that Ecclesiastical Power ought not to depend upon the Temporal, he hath undermined the Crown, and robbed the King of his Supremacy; the Argument he hath made use of, doth as forcibly defeat the King's Supremacy, as it proves the Author's Assumption: It maintains, That the Ecclesiastical Power flows from a distinct Fountain; and hath no Relation to, nor Dependence upon the Christian Magistrate. This Argument is the Glory of the *Roman Catholicks*, and they think it invincible. I will transcribe the Heads of it out of *Father Parsons*, and in his Terms; and by comparing it with our Author, you will find to whom he is beholding for it.

Parsons Answ.
to *Coke's* 5th
Report, p. 23.
Page 24.

Almighty God is Author of all lawful Power whatsoever, both Spiritual and Temporal.

The Differences which are between these two Powers and Jurisdictions, Spiritual and Temporal, Ecclesiastical and Civil, are divers, and sundry, taken from the Diversity of their Ends and Objects; the End of Spiritual Power being to direct us to Everlasting Salvation; and of the Temporal, or Civil, to govern well the Commonwealth.

And according to these Ends are their Objects, Matter, and means.

In the Primitive Christian Church, for almost Three hundred Years together, none or few Kings being yet converted, only Spiritual Authority was exercised by the Apostles, and Christian Bishops, and their Successors, in Ecclesiastical Affairs.

Page 25.

This Spiritual Jurisdiction continued, in the Primitive Church until Constantine the Great; and other Emperors after him, being converted to the Christian Faith, entred into the Church, retaining the Temporal States, and Temporal Power, which before they had, but submitting themselves in Spiritual and Ecclesiastical Matters unto the Spiritual Government and Governours.

Albeit

Albeit both these Powers be of God, and do proceed from him as the Author and Original; yet far differently; for that Ecclesiastical Power is immediately from God; and albeit Civil Power and Jurisdiction be of God's Institution also, and duely to be honoured in his Church, yet it is far otherwise derived and received from God than in Spiritual (that is to say) not immediately by God's own delivery thereof, but immediately rather; to wit, by Mediation of the Law of Nature and Nations. Page 26.

Out of all which it is deduced, That forasmuch as Christ hath purchased to himself a most dearly beloved Church, and committed the same to be governed by his Apostles and Bishops, and their Successors unto the World's End, it must needs follow, that he hath endowed the same Church with a sufficient spiritual Authority both directive and coactive to that end. Page 27.

I shall refer you for an Answer to this Argument to the Eighth Book of Mr. Hooker's Ecclesiastical Policy, wherein that Great Man hath fully confuted the Jesuit's Objection, and exposed the Notion of a Personal Separation between the Church, and a Christian Commonwealth; concluding, That it cannot be maintained that a Church, and Commonwealth, which receives the true Religion, are two distinct Societies; unless we restrain the Name of a Church in a Christian Commonwealth, to the Clergy, excluding all the rest of Believers, both Prince and People. And truly when I consider the Noise which some Men make about the Church, who will not allow those who are most sincere in her Communion, to be Members of her; I am inclined to think, That they are driven to Mr. Hooker's Refuge, and do imagine the Clergy only to be the Church. But when I consider further, That this Tumult about the Church is raised by men who have the least real concern for her, by those who have nothing to shew for the Church, but the Name of it; who make the Church a Faction, and shelter their Impurities under her Holy Communion: I say, when I consider these things, I cannot but think that these men have

some further Ends in all this ; such Ends as no honest Man, or good Subject dares own; but the Church of *England* most Pure, and Uncorrupted, owns none of these Pretenders; her Articles and her Doctrines bear witness that they are not of her; and blessed be God the Rashness and Folly of these Men, have not withdrawn the King's Protection from our Church; he hath exposed his most Sacred Person to the greatest Dangers in her Cause, and will yet defend her.

Pardon, Sir, this Digression, and give me leave to pursue this Objection of the Jesuit a little further; and for a clear Confutation of it, and as a Foundation of what I shall speak to the Second Question, I shall endeavour to make good this Proposition; That *all Ecclesiastical Power and Jurisdiction in England, is derived only from the Crown.* By Ecclesiastical Power and Jurisdiction, I do not mean the Power of the Keys, or of inflicting Ecclesiastical Censures, nor any Authority to administer Divine Service; the Injunctions of Queen *Elizabeth*, made in the first Year of her Reign (to which the Statute 5 *Eliz.* cap. 1. doth refer) and also the 37th Article, have discharged the Supremacy from that Sense which the Papists pretended might be concluded from it; but my Meaning is, That the Power of calling Assemblies, and making Laws, of holding Courts, and exercising Ecclesiastical Jurisdiction in them, is derived from the Crown. By the Crown, I mean the same Fountain, from which all Temporal Power in *England* is deriv'd; that is, the King, in all Acts of Executive power; and the Legislative power, in all extraordinary Cases for which no Law hath already provided.

This Proposition is expressly laid down and declared in the Act 1 *E. 6.* cap. 2. which expressly recites, That all Authority of Jurisdiction Spiritual and Temporal is derived from the King, as Supreme Head of the Churches and Realms of *England* and *Ireland*.

knowned, That K. H. 8. had Supreme Power, Jurisdiction, Order, Rule, and Authority over all the Estate Ecclesiastical: And 1 Eliz. cap. 1. intituled, *An Act to restore to the Crown the Ancient Jurisdiction over the Estate, Ecclesiastical and Spiritual, and abolishing all Foreign Power repugnant to the same*, explains what is implied in the Notion of Supreme Power; by that Act all such Jurisdictions, Priviledges, Superiorities and Preheminiences Spiritual and Ecclesiastical, as by any Spiritual, or Ecclesiastical Power or Authority hath heretofore been, or lawfully may be Exercised, or Used for the Visitation of the Ecclesiastical State and Persons, and for Reformation, Order, and Correction of the same, and of all manner of Errors, Heresies, Schisms, Abuses, Offences, Contempts, and Enormities, are United and Annexed to the Imperial Crown of this Realm. The same Powers had been declared by several Parliaments in the Reign of King H. 8. of Right to belong to the Crown; and tho' the Statutes made in that King's Reign concerning the Supremacy, were repealed 1 M. and perhaps have not been revived since; yet the Powers therein mentioned, were the Ancient Inheritance of the Crown, and were declared so by several Convocations before any Act was made therein. In the Case of Proxies, reported by Sir John Davis, it is resolved, That by the Statutes made in the Time of K. H. 8. the Crown was but remitted and restored to its ancient Jurisdiction, which was usurped by the Bishop of Rome. All our Law Books do express the Acts of Parliament in the time of K. H. 8. concerning the Supremacy, to be declarative only of the ancient Law.

But because Temporal Persons may be supposed not to be competent Judges of the Rights of the Church, and Parliamentary Decisions are not of much Authority with the Author, give me leave to lay before you some Evidences which in his Opinion may be more Authentick and Convincing.

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The Second Canon made 1 Jac. I. provides, That if any person shall affirm, that the King's Majesty hath not the same Authority in Ecclesiastical Causes, which the Godly Princes amongst the *Jews*, and the Christian Emperors in the Primitive Church exercised; or shall presume to impeach, or lessen the King's Supremacy in those Causes, he shall be *ipso facto* excommunicated. And the 37th Article explains the Supremacy to be that Prerogative which was always given to all Godly Princes in Holy Scriptures by God himself. And Mr. *Hooker* in his 8th Book of *Ecclesiastical Policy*, shews what Power the Scriptures attribute to Kings; and proves, that the Kings amongst the *Jews* were Supreme in Ecclesiastical Affairs; and that the Priests never had that Power, unless they were Kings as well as Priests: That by virtue of this Power the Piety or Impiety of their Kings, did always change the publick face of Religion, which could not be, if the Priests alone had had that Power; and he shews, that the power to call and dissolve all Solemn Assemblies about the Affairs of the Church, and the Authority of making Ecclesiastical Laws, and changing Religion, did belong unto the Supream Temporal Magistrate; and that according to the Patern of the *Jews*, the like Power in Causes Ecclesiastical is by the Laws of this Realm annexed unto the Crown. And the Explanation of the Regal Power in the Canons made in the Convocation 1640. (wherein Archbishop *Laud* presided) do seem to speak as much; and yet that Archbishop was well known to have as much Zeal for the Rights of the Church, as became him. In the draught of Ecclesiastical Laws prepared by Archbishop *Cranmer*, and the greatest Men of those times, in pursuance of the Acts 25 H. 8. cap. 19. 35 H. 8. cap. 16. and 3 E. 6. cap. 11. Tit. *De Officio & Jurisdictione omnium Indicum*, it is declared thus, *Rex tam in Archiepiscopos, Episcopos, Clericos, & alios ministros, quam in Laicos infra sua Regna, & Dominica, plenissimam jurisdictionem,*

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tam civilem, quam Ecclesiasticam, habet & exercere potest; cum omnis Jurisdictio, & Ecclesiastica, & secularis, ab eo tanquam ex uno & eodem fonte derivatur.

I mention this, not as a Law, but as the Judgment of those Great Men who compiled that Book; that Excellent Body of Ecclesiastical Laws, if they had been established, had made the Reformation of our Church much more complete and perfect; for notwithstanding the Zeal of the first Reformers, and the early care they took to correct the Ecclesiastical Jurisdiction in *England*; the Spiritual Courts have kept their ground, and do yet retain their Primitive Corruption.

Sir Edward Coke, in *Hensloe's Case*, in his Ninth Report, saith, he hath a Book published in *Latin* by *Matthew Parker*, Archbishop of *Canterbury* (who was well skill'd in Antiquity) wherein are these words, *Rex Angliæ olim erat Conciliorum Præses, Vindex Temeritatis Romane; nec ullam habebunt Episcopi Auctoritatem, præter eam quam à Rege acceptam Referebant.*

Archbishop *Bramhall*, in the fourth Chapter of his Just Vindication of the Church of *England*, saith, *Our Kings from time to time called Councils, Made Ecclesiastical Laws, Punished Ecclesiastical Persons, and see that they did their Duties in their Callings; Prohibited Ecclesiastical Judges to proceed; Received Appeals from Ecclesiastical Courts; rejected the Laws of the Pope at their pleasure, &c.* and then concludes, *That the Laws made by King Henry the VIIIth on this behalf, were not operative, but declarative.* And a little after he saith, *It is true, the habitual Jurisdiction of Bishops flows from their Ordination, but the actual exercise thereof in publick Courts after a Coercive manner, is from the gracious Concessions of Sovereign Princes.* The Learned Author of the Discourse concerning the Illegality of the late Ecclesiastical Commission, in answer to the Rule laid down in *Cawdry's Case*, in Sir Edward Coke's Fifth Report, *viz.*

That

A Letter to a Member of Parliament ;

*That the 1 Eliz. cap. 1. as to the High Commission-Court, was declarative only of the old Law ; doth admit, That the Supream Coactive Jurisdiction was always the Right of the Crown ; and that the King in Parliament might make Laws for reformation of Religion, and establishing good Order therein ; and that the Power granted 1 Eliz. to exercise the Supremacy by Commission, was well granted ; but he contends, that that Clause which erected the High-Commission Court being repealed by 17 Car. 1. c. 11. no such Commission could be granted ; and that the King could exercise no new Power without an Act of Parliament : But it is sufficient for my purpose to shew, that Ecclesiastical and Temporal Power have the same original, and are both the Creatures of the Crown. As in Temporal matters the King's Supream Authority is exercised in His Ordinary Courts, so likewise His Supremacy in Ecclesiastical Causes is preserved in the ordinary Ecclesiastical Courts : Agreeable to this Opinion speaks the Act, 24 H 8. cap. 12. which recites, *That the Realm of England is an Empire, governed by one Supream Head and King, &c. with plenary, whole, and entire Power, Preheminence, Authority, Prerogative, and Jurisdiction, &c. for final determination of Causes ; the Body Spiritual being endowed by the King's Progenitors with power to declare and interpret when any Cause of Divine Law comes in question ; and the Laws Temporal for trial of Property, &c. being administred by Judges, and Ministers of the Temporality.* By which it appears, that the Spiritual Judges are as much the King's Instruments in the exercise of His Ecclesiastical Power, as the Temporal Judges are in Temporal or Civil Causes.*

And as Ecclesiastical Power is derived from the Crown, so all Ecclesiastical Laws, which are the Rule and Measure of that Power, do proceed from thence : No part of the Canon-Law was submitted to in *England*, but such as was admitted and received by Ancient Custom, and the general

general Consent of the whole Realm; which Custom our Law presumes to commence by Act of Parliament: And if Canons are obliging in *England*, although they are not confirmed by Parliament (which I shall hereafter enquire of) they owe even that to an Act of Parliament.

I might hence proceed to give you instances of Statutes, ^{25 H. 8. c. 19.} which grant Jurisdiction of several Causes to the Spiritual Courts. The 24 *H. 8. c. 12.* declares, That the Cognizance of Causes Testamentary, Causes of Matrimony, and Divorces, Right of Tithes, Oblations, and Obventions, by the goodness of Princes of this Realm, and by the Laws and Customs of the same, appertaineth to the Spiritual Jurisdiction of this Realm.

And Jurisdiction in Causes of Defamation, laying violent hands on Clerks, Incontinency of Priests, power to punish Usurers, to grant * Administration, and to receive the Probate of Wills, to receive and determine Appeals, are granted by several Acts of Parliament. And by the 1 *Eliz. c. 1.* the Queen had power to correct and reform Heresy by Commissioners; and tho that Power is repealed, yet no man doubts but that it was well granted. The Author contends (as I have said before) that before 2 *H. 4. c. 15.* the Ordinary could not punish Heresy; wherein although he is mistaken, yet it shews, that in his Opinion, the Ecclesiastical Courts are beholding to the Temporal Power for their Jurisdiction. ^{* Selden's Discourse of Administration. Letter, p. 36.}

I shall conclude what I have offered upon this Point, with the Statute of *Carlisle.* 35 *Ed. 1.* cited in *Cawdry's Case* in Sir *Edward Coke's* 5th Rep. and by Archbishop *Bramhall*, in the Fourth Book of his *Just Vindication*, &c. by that Act it was declared, That the holy Church of *England* was founded in the Estate of Prelacy within the Realm of *Eng-*

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land, by the Kings and Peers thereof. Here is a very Ancient Judgment of the Parliament, That the Bishops themselves were the Creatures of the Crown; and if so, their Power also must needs proceed from thence.

You who perfectly understand the Principles upon which the Reformation of our Church was built, and by which it hath been defended ever since, will, I fear, think that I might have spared the pains which I have taken to prove, that Ecclesiastical Power is derived from the Crown: You will suppose that ought to be admitted as a Maxim, and not disputed; but if you please to consider, that the Positions of the Author do not only shake the King's Power over Ecclesiastical Assemblies, but his whole Supremacy; you will, I hope, think there was some reason for it, and that I have not wholly lost my labour. This Proposition being admitted, makes my way plain and open to the Second Question; and having proved it, I might reasonably expect that the Author should make some proof of such a Power to convene, debate, and resolve, as he pleads for; that he should either produce some Authentick Grant, or Charter; or make it appear, that by constant, and uninterrupted usage, Convocations have enjoyed those Prerogatives; either of which I am persuaded he can never do. But I shall not rely only upon the Authority of this Proposition; but shall proceed more particularly to consider his Enquiry, *What Law there is that commands, or permits their assembling, conferring, or resolving as a Convocation, but the absolute free pleasure of the Prince?*

The calling and dissolving Ecclesiastical Assemblies is a Right of the Crown, as ancient as the Profession of Christianity in this Kingdom; and amidst the greatest Usurpations of the Pope, our Kings have ever been in possession of it; indeed Popes did sometimes call Synods in *England*, but

but never exclusive of the King; and even those which were called by the Pope, were often prohibited to assemble by the King's Authority: The Clergy in Convocation have frequently owned this Prerogative, and the 25th of H. 8. cap. 19. recites this Acknowledgment, and declares that the Convocation shall always be assembled by the King's Writ.

This Right of the Crown is so evident, that the Author with some difficulty, and after his [*were the calling of Convocations lodg'd purely in the breast of the Sovereign*] is obliged to confess, that *they cannot assemble without the assent of the King, and that his Writ is necessary in order to it.* But he is resolved that the King shall not gain much by this Concession: for he maintains that the King is entrusted only with the formal part of Summoning and Convening, and that they ought to be summoned whenever Writs go out for a Parliament; and he seems to insinuate, that the Law of the Realm hath directed the King, or at least his Chancellor, Keeper, or other Minister, having the custody of the Great Seal, to issue out a Writ of Summons of a Convocation: I would not offer violence to the Author's meaning, but I desire you to consult his 35th page; so that our Author has made the King merely Ministerial in the exercise of this great trust; he hath not left him Judge of the time and occasion for a Convocation.

The Author labours to prove, that the meeting of a Convocation is not precarious; and the reason he gives, is, because the meeting of a Parliament is not so; and that there is the same necessity for the meeting of a Convocation, as of a Parliament: And that the calling of Parliaments is not precarious, he endeavours to prove from several Sayings pickt out of the Law-Books, which he calls Common-Law Maxims; and then says, that every one of those Axioms

holds in the Case of a Convocation, as well as a Parliament.

I must confess I was surprized to see the Author so far reconciled to those old Sayings (which he saith used to be urged by his Enemies, to prove the necessity of Parliaments) as to press them with all the advantages they are capable of; he forgets these are Commonwealth Principles, and the Arguments of the Parliament in 1640. to procure the Triennial Bill, which rendered Parliaments as independent upon the Crown, as the Author would now make Convocations. That Act of Parliament gave the Chancellor, and Keeper of the Great Seal, and their subordinate Ministers, power to convene a Parliament, without any Authority from the King; the Parliament which made it, was of Opinion, That the King was entrusted only with the formal part of Summoning, and pronouncing the Dissolution of Parliaments, and that the Laws had determined how, and when he should do it, as the Author supposes the King is entrusted and obliged in respect of a Convocation; which *ought not to be at his free will and pleasure.* But I would further advertise the Author, that notwithstanding all those popular Axioms, the Triennial Bill stands repealed by Act of Parliament; and the reason given in the Act for the repeal of it, is, *because it was in derogation of His Majesty's just Rights and Prerogatives inherent to the Imperial Crown of this Realm, for the calling and assembling Parliaments; and may be an occasion of manifold mischiefs and inconveniencies, and much endanger the Peace and Safety of His Majesty, and all His li-ge People of this Realm.* I doubt not, but the Author, in the Reign of the Late King Charles the Second, thought the Bill for a Triennial Parliament a very unwarrantable Act, and most justly repealed; and yet when it comes to be (what he fancies) the Case of the Church, he can be contented to bind the King in Chains, and to devest him

Letter, p. 31

Letter, p. 33

Letter, p. 34

16 Car. 2. c. 1.

him of those Prerogatives which are as ancient as the Government.

I might here be very large in shewing the difference between a Parliament and a Convocation; and that the necessity of both is not equal: I might tell you that several Ancient Statutes have provided for the frequent meeting of Parliaments; that they alone can make and abrogate Laws; and are the Supream Court of Judicature in *England*, having power to examine and correct the Judgments of all Inferior Courts in the Kingdom; none of which can be affirmed of a Convocation: No positive Law hath required its frequent meeting; its Legislative Power, if it hath any (which I shall examine presently) may be supplied by the Parliament; and its Jurisdiction, as a Court, is ordinary, without power or superiority over any other.

Therefore if a Parliament depends upon the good pleasure of the King for its meeting and dissolution, I hope I may safely conclude, after the Author's way of reasoning, That the King is Judge of the Time and Occasion of the meeting of a Convocation.

I do agree that a Convocation is an Ecclesiastical Court, Letter, p. 29. and summon'd by the King's Writ directed to the Archbishops; and that the King is entrusted with the power of Page 30. convening Convocations in respect of the Church, as he is with summoning Parliaments for the redress of Grievances, and the Safety of the Nation: but I cannot allow it to be part of the definition of a Convocation, That they are to be called and convened in Parliament time; they are not part of the Parliament, nor are they in their nature or constitution dependent upon it; they may be assembled when no Parliament is in being; they may meet before the Parliament, and may be continued after the dissolution of it; their Writ of Summons hath no relation to the calling of a Parliament, nor doth.

Letter, p. 39.

doth it so much as mention it; their Summons is distinct from that of a Parliament, and so is their Dissolution. I cannot find in what Abridgments of our Law the Author finds the time of their meeting to be part of the description of a Convocation; and the use which the Author makes of Vocabularies in this Case, shews that he depends upon the number, more than the weight of his Arguments. It is true indeed, Convocations are usually conven'd in Parliament-time; but I do not take that to be essential to a Convocation, but to be done for these two Reasons. 1. That if any thing should happen to arise in Parliament which concerned Religion, they might, if the King should please to direct, give their Advice and Opinion therein. 2. That the Subsidies granted to the King by the Clergy in Convocation might be confirmed in Parliament; I will not dispute how far those Grants were obliging to the Clergy without confirmation; but if you look into the Statute-book, you will find that they were generally ratified by Parliament.

Letter, p. 35.

Having passed through this part of the Author's Harangue, I come now to consider the Instances which he hath produced, to prove that a Convocation ought to be called whenever a Parliament is summoned. He begins with the Statute of 8 H. 6. cap. 1. that Act makes it manifest, that a Convocation did sometimes meet, and that its Members were commonly arrested when they did meet; but how often, or at what time they met; or that their meeting was of course in Parliament-time, or that the King called them whether he was, or was not in humour (as the Author, with great respect to the King, is pleas'd to express himself) it doth from *that Act* by no means appear.

The next Argument of the Author's, and that which speaks most shew of reason, is taken from the Opinion of

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Fitzherbert, in his *Natura Brevium*, who saith, that the Statute 2 H. 4. cap. 15. first enabled the Ordinary of the Diocese to convict of Heresy. *Sir Edward Coke* in *Cawdry's Case*, says the same thing; whence the Author concludes, that a Provincial or National Synod only having power to convict of Heresy, their sitting was necessary. I have before shewed, 1. That before that Act the Ordinary of the Diocese had jurisdiction of Heresy. And 2. If the Ordinary had first received Jurisdiction from this Act, yet the Reason failing, the necessity was determined. But I say, lastly, If Heresy could be determined only in Convocation, that yet as the Law leaves the King Judge of the necessity of calling a Parliament (which hath a more necessary and universal Jurisdiction) it may reasonably be presumed to leave him the same liberty in the Case of a Convocation.

The last Instance which this Author produceth, is a Letter, p. 37. Writ of Summons of a Bishop to a Parliament, wherein he is also commanded to warn the Clergy, *Quod ad Parliamentum prædictum personaliter intersint ad consentiendum iis qua tunc de communi consilio Regni contigerint ordinari*. That the Clergy were ever a part of the Parliament, or sate in it, is very uncertain; the affirmative is supported only by Conjectures, without any Record, or Authentick Memorial to maintain it: Indeed in this Sense the Clergy in Convocation, 1 E. 6. took that Writ, when they petitioned, that according to the Ancient Custom of the Nation, and the Tenor of the Bishop's Writ to the Parliament, the Inferior Clergy might be again adjoin'd, and associate with the Lower House of Parliament: They have try'd at the same thing since, but have never assigned a time when they were in possession of this Right, nor can they plainly shew that they ever enjoy'd it; indeed the Acts 2 R. 2. c. 2, & 12. take notice of the Assent of the Bishops and Proctors of the Clergy; but the Enacting-part of those Acts is by the King, with the Assent of

Vid. Petition in the Reformation, 2d part. of the History of the Reformation.

Folio 49.

of all the Lords and Commons. Those Acts are sufficient to shew, that at that time the Clergy had Proctors, but by no means that they were part of the Parliament, or had a right to Vote in it; their Assent was collateral to those Acts, and (as that most exact Historian seems to take it, in his Second Book of the History of the Reformation) might be added only to give countenance to the matter of those Acts, which was the annulling the proceedings of a whole Parliament. In *Cotton's* Abridgements of Records we find frequent mention of the Proctors of the Clergy; but upon consideration they will appear in some Instances to be only Persons deputed by the Bishops to represent them; and in others, to be the Clergy in the Lower House of Convocation: This Clause hath stood in the Bishop's Writ these 300 years without any manner of use; wherefore we may reasonably suppose, that it was first inserted upon some particular Occasion, and continued after the Cause was determined: Parliamentary Writs prove nothing of the Constitution; they were anciently framed upon some particular Occasions, and often varied according to Circumstances: A Writ of Summons in the time of King *E. 1.* upon occasion of Wars with *France*, had this Clause, *Quod omnes tangit, omnibus approbetur*; and it may with as much reason be concluded from that Writ, That the King cannot make War without the approbation of his Parliament; as from this, That he cannot hold a Parliament without calling the Clergy to it; I am sure 'tis a much better Conclusion, than that he cannot hold a Parliament without calling a Convocation; for admitting that the Clergy are a part of the Parliament, and ought to be called to it (which is all that can be inferred from the Writ) yet doth it not follow therefore, that the Convocation ought to be summon'd when the Parliament meets; that is plainly a distinct Assembly, and is summoned by a distinct Writ; and if the Proctors

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of the Clergy are a part of the Parliament, yet are they not so, as they constitute the Convocation.

This Notion of the Author, which makes the King merely Ministerial in the convening Church-Assemblies, being altogether new, it cannot be expected that I should be able to produce any Authority in a matter which was never made a Question before. But to what I have said concerning the King's Power in Calling Synods, give me leave to add a Clause in the Explanation of the Regal Power, in the Canons made 1640. it is thus. *The Power to call and dissolve Councils, both National and Provincial, is the true Right of all Christian Kings within their own Realms and Territories; and when in the first times of Christ's Church Prelates used this Power, 'twas therefore only, because in those days they had no Christian King.* The Person who presided in the Convocation, when these Canons were made, wanted neither Zeal nor Power to maintain the Rights of Ecclesiastical Assemblies; and yet we see the King allowed the sole Judge of the time of their meeting, without any such Qualifications or Restrictions as the Author dreams of.

If you consider that the Proceedings of our *English* Convocations were very ill kept, and most of their Papers lost, as the First Part of the History of the Reformation, &c. observes, you will not require further Evidence from their Acts.

I am not concerned to inquire, how often His Majesty, since His accession to the Crown, hath conven'd the *Scotch* Assembly; that hath no relation to us; but I am informed, that by the Constitution of that Kingdom, certain and stated Times are appointed for the meeting of that Assembly: And therefore in suffering them to sit at their usual Times, the King doth comply with the Law of that Kingdom, as he doth here

Letter, P. 23.

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Letter, p. 26.

with our Law, by convening the Convocation no oftener than he pleaseth. I think the Opinion of the Dissenters, concerning a Convocation, is not very material to be consulted ; the King is no more obliged to consult them in that Affair, than he is the Author, and those, in whose name he speaks.

But I shall proceed to the Second part of the Author's Enquiry ; and endeavour to shew, That the conferring, and resolving of a Convocation, depends upon the Absolute free pleasure of the Prince.

This power over the Debates of the Convocation is very ancient, and was exercised by King *William* the First as fully as we now claim it. *Eadmerus* hath this Memorial of that King. *Primates Regni sui, sive Archiep. dico Cantuariensem, si coacto generali concilio, praesideret, non sinebat quicquam statuere aut prohibere nisi quae suae voluntati accommoda ; & à se primo essent ordinata.*

Letter, p. 51.

The prohibition mentioned in *Rolls's* Abridgment, Not to deal with any thing that concerned the King's Crown and Dignity ; and the attendance of the King's Commissioners in Convocation for that purpose, do not prove that the Convocation anciently had no power to treat of any matter which was not within those restraints ; nor do the Books which mention them, make any such inference ; yet they do in general prove, that the King had very great power over their Debates, and that they very much depended upon the Crown for the freedom of them. But it is not my intent to examine the Antiquity of this Prerogative of the King ; it is sufficient for my purpose, if I can shew that he is invested with it now ; and that will

will appear, if you please to consider the Act 25 H. 8. cap. 19. and the construction of Lawyers upon it, and the practice of all times ever since that Law hath been made; the Act recites, That the Clergy before that time had not only acknowledged according to the truth, That the Convocations of the Clergy had always been, and ought to be assembled only by the King's Writ; but also submitting themselves to the King, had promised in verbo Sacerdoti, that they would never presume to attempt, alledge, claim, or put in ure, enact, promulge, or execute any new Canons, Constitutions, Ordinances, Provincial, or other, unless the King's Assent and License may to them be had, to make, promulge, and execute the same; and that His Majesty do give his Royal Assent and Authority in that behalf. Whereupon that Statute Enacts, according to the said submission of the Clergy, That they, nor any of them, shall presume to attempt, alledge, claim, or put in ure, any Constitutions, or Ordinances, Provincial or Synodal, or any other Canons: Nor shall enact, promulge, or execute any such Canons, Constitutions, or Ordinances Provincial in their Convocations in time coming (which shall always be assembled by the King's Writ) unless the same Clergy may have the King's Assent and License to make, promulge and execute such Canons, Constitutions and Ordinances Provincial and Synodal. The Author saith, that the words in this Statute, by which the Right of a Convocation to confer, debate, and resolve, is pretended to be cut off, are these: That they shall not enact, promulge, or execute any Canons, or Constitutions, unless they have the King's License to enact, promulge, and execute them. And having represented the prohibition of the Act in these words, he proceeds to shew, That it is no consequence to say, they cannot confer, debate, and resolve without the King's License, Letter, p. 54.

Letter, p. 57.

License, because without that they cannot enact, promulge, and execute; He saith, They are forbid only to enact, promulge, and execute without License, and therefore they can do any thing which comes not under any of those restrictive words; though they should have no leave for it: To prepare the draught of a Canon in order to the King's giving his assent, is neither to enact, promulge, nor execute it; that it is plain, that it is not to promulge or execute; and to enact, is to give the Authoritative Fiat to a Law, by which it becomes obligatory; but the preparing a Canon for the Royal Assent, is nothing of this kind. Thus hath the Author stated the Objection upon the Act, and so invincibly hath he confuted it: But I should be glad to know why the Author hath omitted these words; [they shall not presume to attempt, alledge, claim, or put in ure] and why instead of these words [unless they have the King's License and Assent to make, promulge and execute] he hath inserted, [unless they have the King's License to enact, promulge and execute] though the words, enact, promulge and execute, should be satisfied by the Royal Assent to Canons, when made; yet to make, &c. is more large and comprehensive; and extends as well to the conferring, debating, and drawing of Canons, as to the enacting of them: To justify this interpretation of the word, I shall transcribe a Sentence or two out of the Eighth Book of Mr. Hooker's Ecclesiastical Policy; where taking notice of the Error of those who hold that the power of making Ecclesiastical Laws, belongeth to none but Ecclesiastical Persons only, He saith, Their oversight groweth herein, for want of exact observation, what it is to make a Law. Tully, speaking of the Law of Nature, saith, That thereof God himself was Inventor, Disceptator, Lator; the Deviser,

viser, the Discusser, and Deliverer; wherein he plainly alludeth unto the chiefeſt Parts which then did appertain to this Publick Action; for when Laws were made, the first thing was to have them devised, the second to sift them with as much exactness of Judgment, as any way might be used; the next by solemn Voice of Sovereign Authority to pass them, and give them the force of Laws. Thus that great Man, and several of the Canons of our Church do consider the debating and resolving as parts in the making Canons, as well as the Enacting, or *Authoritative Fiat*, by which they become Obligatory. The Stile of the Canons, 1597. is, *Constitutiones Ecclesia per Archiepiscopum, Episcopos, & Reliquum Clerum Cantuariensis Provinciae, tractata ac postea per ipsam Regiam Majestatem approbata, & confirmata, &c.* And the Stile of the Canons, 1 Jac. 1. is, *Constitutiones, five Canones Ecclesiastici, per Episcopum Londinensem Presidem Synodi pro Cantuariensi Provincia, ac Reliquos Episcopos, & Clerum ejusdem Provinciae ex Regia auctoritate tractati, & conclusi in ipsorum Synodo inchoata, &c. ab eadem Regia Majestate deinceps approbati, lati, habiti, ac confirmati.* The use which I make of this, is to shew, That in the making a Canon, something more is implied than the enacting, and that every thing is comprehended in it, which may be preparatory to its being a Canon. If then the King's Assent and License are necessary to make a Canon, it is also necessary to every thing, without which a Canon cannot be made. The Statute saith, A Convocation shall not Alledge, Claim, put in Ure, or so much as Attempt any Canon, &c. unless they may have the King's Assent and License to make, promulge, or execute the same. The Author asks, If this Act says there shall be a double License from the King, that he shall Assent once to the preparing.

Letter, p. 57.

Letter, p. 56.

Letter, p. 52.

4 Instit. 323.

ring and framing Canons, another time to the promulgating them? If he had considered the Act, he might perhaps have had no occasion for that enquiry; it seems plain by the Act that the Clergy submitted themselves to the necessity of a double License, and the Act enacted according to their Submission; and this hath been the Opinion of our greatest Lawyers ever since. Sir Edward Coke in his Twelfth Report, fol. 72. cited by the Author, reports, That at a Committee of Lords in Parliament, 8 Jac. 1. it was resolved by the two Chief Justices, and divers other Justices: 1. *That a Convocation cannot Assemble without the Assent of the King.* 2. *After their Assembly they cannot confer to Constitute any Canons without License of the King.* 3. *When upon Conference they conclude any Canons, yet they cannot execute them without the Royal Assent* This Resolution is likewise cited and admitted by Dr. Godolphin, in his *Repertorium Canonicum*. But the Author takes several Exceptions to this Authority; I shall not lose time to examine them, but shall produce you other to justify this Construction of the Act. He seems to have a better Opinion of Sir Edward Coke's 4. Institutes, and makes use of the Authority of that Book in his Letter, and yet that Book asserts that a Convocation must have both License to make Canons, and after they be made, the King's Royal Assent to allow them, before they be put in Execution; but because the Common-Lawyers may be supposed not to be so equal Judges of Spiritual Jurisdiction, I will produce you the concurrent Testimony of the greatest Canonists in the Ages wherein they lived. Dr. Cosins, in his Tables, which were published Anno 1604. which was six years before the Resolution reported by Sir Edward Coke, lays down these three Positions: 1. *Synodus Provincialis,*

vincialis, vel Nationalis Convocari non debet absque Principis Rescripto. 2. Nec tractari, nec determinari aliquid potest in Synodo, nisi consentiente & assentiente Principe. 3. Nihil habet vim legis, priusquam Regius assensus fuerit adhibitus his, quæ Synodus Decernenda censuerit. And Dr. Zouche in his *Descriptio Juris, & Judicii Ecclesiastici*, published some years before the Twelfth Report, hath those three Assertions in the same terms, and cites the 25 H. 8th, Cap. 19. in the Margin, as the ground of those Opinions. I shall only observe, That the Resolution, 8 Jac. seems to be taken from the Opinion of Dr. Cosins, and agrees with it in Terms. The Opinion of these great Men, doth abundantly justify that Resolution, and shews, that in the judgment of those times a Convocation was not so independent upon the Crown, as the Author would now make it. But that this great Point which the Author supposeth to concern the Church, as it is a Church, may not seem to rely only upon the Authority of Private Men; I desire you to peruse the Petition of the Clergy of the Lower House in Convocation, to the Bishops in the Upper House, 1 E. 6. it is set forth at large in the *Irenicum*; and amongst the Records at the end of the Second Part of the History of the Reformation, &c. the Petition exactly recites that Part of the Act, 25 H. 8. Cap. 19. which limits the Power of making Canons; and then the Clergy desire, That being assembled in Convocation by the King's Writ, the King's License may be obtained, and granted for them, according to the said Statute, authorizing them to attempt, entreat, and commune of such matters, and therein freely to give their Consents, which otherwise they may not do. This is a very Authentick Exposition of that Statute, and without any other evidence, is sufficient to shew, that
it

Irenicum, cap.

8.

it was the intention of that Act, that the treating, and Resolving, as well as the Meeting of a Convocation, should depend upon the mere good Will of the Prince.

But the Practice ever since gives great Weight and Authority to these Opinions. At the Convocation held 32 H 8. the King by Commission authorized the Convocation to consider, and give him their Opinion concerning his Marriage with *Ann of Cleve*; and in their Judgment they recite the King's Commission at large; and by Virtue thereof do declare and agree, The King's Marriage with her to be Null and Void; and that *alio Judicio Ecclesiastico non expectato*, either of them might contract Matrimony. This was in a Case, of which they had Cognizance as a Court, and yet you see they were beholding to the King's Commission for their Power to debate and consider it.

Third Part of
Fox, Edit.
1684. fol. 16.
Hist. Reform.
2d Part, 263.

3. Fox, fol.
471.

At the Convocation, *r. M. Weston*, the Prolucutor, certified the House, *That it was the Queen's Pleasure that they should debate of Matters of Religion, and constitute Laws thereof, which the Queen would ratify with her Parliament.* And *John Philpot*, 1555. being examined before the Council, insisted that he was Imprisoned for disputing in the Convocation-House against the Sacrament of the Altar, which matter was moved by the Prolucutor with the Queen's Consent. So that even in those days when Ecclesiastical Power most flourished, the Queen directed the Proceedings of the Convocation.

King

Vide Sparrow's Edition of 39 Art. with that Declaration prefixed.

King *James* the First, in his Declaration prefix'd to the Thirty Nine Articles, and publish'd with them, doth declare, that he is Supreme Governour of the Church of *England*, and that if any difference arise about the external Policy, concerning the Injunctions, Canons, or other Constitutions, the Clergy in their Convocation is to order and settle them; having first obtain'd Leave under the Broad-Seal so to do; and the King approving their Ordinances and Constitutions; providing that none be made contrary to the Laws and Customs of the Land. The Instrument which confirms the Canon 1 *Jac. I.* recites a Licence granted to the Convocation, to confer, treat, debate, consider, consult, and agree such Canons, Orders, &c. as they should think necessary. And my Lord C. *J. Vaughan* in the Case of *Hill and Good*, takes notice, that that Convocation was call'd by the King's Writ, and had the King's Licence to treat, &c. of Canons, &c. and that several Canons were concluded, to which the King gave his Royal Assent, and by his Letters Patents confirm'd them, according to the 25 *Hen. VIII. Cap. 19.* And King *James* the First, in a Proclamation published 5 *March 1 Jac. I.* for the authorizing of the Books of Common Prayer, &c. recites, that he had issu'd out a Commission to the Archbishop and others, according to the Form which the Laws of the Realm in the like Case prescribe to be used, to make an Explanation of the Common Prayer, &c. So that in these days this independant Freedom of debate was not esteem'd amongst the Privileges of the Church. The Canons 1640, mention'd by the Author, had the same Ceremony. 20. *Feb. 1639.* the Writ issued to the Archbishop to summon a Convocation. 15 *April* following, a Commission issued out to the Archbishop, &c. to alter, amend, and change the old Canons. 12 *May* fol-

lowing, there went out another Commission to make Canons during the King's pleasure ; with a Proviso, that they should not be contrary to the Rubrick, &c. 30 June following, the King by Letters Patents gave his Royal Assent to those Canons. It cannot be pretended that the Church was under any Persecution or Force at this time ; it being under the care and conduct of Archbishop *Laud*, who wanted neither inclination nor power to assert her Right, and promote her Interest to the utmost degree it was capable of.

And now having shewed that this Prerogative of the King is declared by Parliament, acknowledged by the Convocation, and supported by the Opinions of the best Lawyers of both Faculties ; I think I might rest here : But that I may not seem to be wanting to the Author, I will presume upon your Patience so far, as to inquire into his Objections, and give some Answer to them.

Letter
page 54.

He saith it is owned by the Judges, that the Act 25 Hen. VIII. cap. 19. is an affirmance of the Common-Law ; and if so, it can never preclude the Convocation from conferring, debating, and resolving without the King's Licence ; because this at common-Law, before the making this Statute, was their undoubted Right ; but he ought not to have taken that for granted, which he can never prove, viz. that that was their undoubted Right before the Act was made ; And, Secondly, If it had been true, yet the negative Words of that Act would bar such a Right.

Letter
page 40.

II. He proceeds to object, that if they are a Court, and have Jurisdiction ; or are a Legislature, and have the power of making Ecclesiastical Laws, then the Liberty of conferring and discussing is necessary to their very existence. I admit that they are a Court when the King thinks

thinks fit to call them; and if they are a Legislature, (which how far they are I shall presently examine) it is when the King finds occasion for Ecclesiastical Laws, and doth license them to confer and debate about them. I cannot see what use the Author can make of the Parallel which he hath drawn between a Parliament and a Convocation; we may allow a Right to Freedom of Speech to a Parliament, and yet deny it to a Convocation; because the Law hath put a Barr to the one and not to the other; it hath precluded a Convocation from conferring, debating, or resolving, without the King's Licence, and hath left Parliaments at Liberty, *Parler ment*, to speak their Minds freely.

Letter p.
46. ad 50.

The Author thinks it strange to suppose any Restraint upon the Debates of a Parliament; that the praying of it doth not argue the necessity of a Licence, and that the present Speaker, by intimation from the House, did omit to ask it; it is very manifest, that the Parliament of *England* is under no such Restraint; Freedom of Speech is their Original Right. I think the present Speaker, when he was elected in the place of Sir *John Trevor*, did not make that Prayer, because it had been made, and granted at the opening of that Parliament: But upon his Election in this present Parliament, he made all the Requests which his Predecessors had done before him. But the Petition of the lower House of Convocation, 1 E. 6. which I have mention'd before, and the Practice ever since, argue a real Proof of the Authority of the Crown over them, and not an Instance only of the respectful Duty of the Clergy towards the Crown. And this I hope I may say, without wounding the Liberties of the Parliament through those of a Convocation. It is no such monstrous thing to suppose a Restraint upon

Letter
page 46.

Letter
page 47.

A Letter to a Member of Parliament ;

on the Debates of a Parliament : An Act in *Ireland*, called *Poyning's Law*, 10 H. VII. and explained by an Act there 3 and 4 P. and M. provides, that all such Bills as shall be offered to the Parliament in *Ireland*, shall be first transmitted hither, under the Great Seal of that Kingdom, and having received Approbation here, shall be sent back under the Great Seal of *England*, to be preferred to the Parliament of *Ireland* ; And no Acts are to pass in that Parliament which are not transmitted in that manner. I need make no Comment upon these Acts : It is plain they leave not that Parliament at Liberty to propose what Laws they please, and yet that Parliament is deriv'd from *Parlement* ; and as many good things may be said for the necessity of their Universal Freedom of Debate, as the Author hath offered for a Convocation : And yet the *Irishmen* always lookt upon this Law to be conclusive upon their Debates, and are satisfy'd. Here the Author may see a Parliament without liberty of debate : What is become then of all his Flourishes taken from that Parallel ?

But he may perhaps insist, that this is not an Universal Restraint, they are not wholly mute, until the King gives them power to debate and act ; but the same Power which disabled them so far, might have put them under an intire disability. If he saith, that the want of Freedom of Speech in *Ireland* is supply'd by the Parliament of *England*, who have power to make Laws to bind that Kingdom. I hope I have said enough to shew, that the defect of Power in a Convocation, is as well supply'd by the same Parliament.

III. The Author sets forth the Writ of Summons to a Convocation, and saith, there is nothing in it which

which can imply that a License to debate is necessary, because there are no negative, or restrictive Words; but those Words which are indifferent in themselves, and do not imply one way, or the other, must receive a legal Interpretation, and be govern'd by those Rules, and Powers, which the Law hath prescribed to a Convocation.

IV. The Author inquires to *what purpose is, such a* Letter, *License beforehand, to make Canons?* it is sufficient that page 55. the Law requires it; besides there may be great reason to restrain Liberty of debate in Matters which are not convenient to be establish'd; such a Freedom may raise Heats and Animosities, and end in Faction, Division, and Tumults; this may seem a Consequence not to be feared, from a Society of Clergy-Men, and I should not suggest it, did I not find them as true to their Passions, as other Men.

Sir, I am sensible I have taken up much of your Time in this part of the Enquiry, but the variety of Arguments, and kinds of Reasoning of our Author, have oblig'd me to it: I think there are but two to come, and those are taken from *Magna Charta*, and the King's Coronation Oath; he Harangues well upon *Magna Charta*, and then makes use of that Part of it which saith, *Ecclesia Anglicana sit libera*; and affirms that *this* Letter page 57. *implies Liberty of doing all that is necessary for a Church; that Ecclesia Anglicana imports a National Church, and a Convocation is incident to a National Church; and Freedom of Debate is incident to a Convocation, and that this Privilege must be included in the Words. sit libera, or else they signifie nothing.* But if this Author had consulted *Father Parsons*, he would have found they signifie something else, with him they confirm the Exemption of Clerks from the Temporal Powers, and Parsons, page 60. 150. Sir

2. Instit.
fol. 2.

Lambert's
Six. Laws
fol. 127.

Felway's
Rep. 182.

Sir Edward Coke saith, they import that all Ecclesiastical Persons, their Possessions, and Goods, shall be free from unjust Exactions and Oppressions. I suppose I have made it pretty clear, that Freedom of Speech is not incident to our National Church, and I take it to be as plain, that a Convocation is not necessarily incident to a National Church; for if it were, the Christian Church was in a bad Condition for the first Three hundred Years; in all which time, until *Constantine*, it had no Convocation, (as *Ælfricus* in the Preface to his Canons complains;) but not to rely only upon Sir Edward Coke's Construction of this Statute, they who allege that, and the King's Coronation Oath, ought first to make it clear that the Church hath such a Right as they pretend, and then they may safely affirm, that *Magna Charta* hath confirmed it, and that the King is sworn to maintain it, but they ought not to amuse us with imaginary Privileges, and then produce those sacred Bonds of Liberty, to second their Dreames 7. H. 8. The Exemption of Clerks from the Temporal Power, being in Question before the King, the Bishops prayed the King to maintain it according to his Coronation Oath; but he put them to prove the Privilege, before he thought himself bound to defend it, and I think I may reasonably expect further Evidence of this Claim, before we admit that *Magna Charta*, or the King's Coronation Oath are engaged in it.

If what I have said, hath any Weight in it, you will easily be persuaded that the late Adjournments of the Convocation were very reasonable, and that the Reflection upon the late Metropolitan, upon that Account is most unjust.

I shall

I shall not spend Time to examine the Authors Insinuations upon that great and good Man, of whom the World was not worthy; the Reproaches of the Malicious, cannot affect his Memory; his great Name will live, when the Memory of his Revilers rots, and is quite extinguish'd; and his Grace, my Lord Arch-Bishop, who now is, is not to be complimented out of his Judgment; he presently understands the State of the Church, and will never be wanting to promote its Interest, or its Honour; and therein his Grace hath a most sure Guide, not the Humour, or Fancy of a Passionate Writer, but his own most exact Judgment and Conscience to direct him: and his Majesty is not to be huffed into the Author's Measures, from any Apprehension of the Number, or Strength of those who call themselves the Church; he hath given unquestionable Testimonies of his Zeal for the established Religion, and it is as unjust to surmise that any Consideration will withdraw him from it; as it is vain and groundless to imagine, that any Motives, besides those of Reason and Conscience, can oblige him to it.

Letter
page 18,
22, 63.

Letter
page 12.

Letter
page 24,
25.

I have hitherto discours'd upon Supposition, that a Convocation hath Power to make Laws in Ecclesiastical Matters; I come now in the last Place to examine the Truth of that Supposition, and to enquire of what *Validity their Acts and Resolutions are, unless confirm'd and approv'd by Parliament.*

The Author very Dogmatically answers this Question, and tells us, *they need no Confirmation of or by Parliament; that the Case of Smith and Byrd, in Sir Francis Moor's Reports, is plain, and full to this Purpose; and that in the Third Place, it is resolved in that Case, that the Canons of the Church, made by the Convocation, and the King without Parliament, shall bind in all Ecclesiastical Matters, as well as an Act of Parliament: That Reso-*

lution

lution is as plain, and full, that at the Common-Law, every Bishop in his Diocess, or Arch-Bishop in his Province, might make Canons, which should bind within their own Limits ; and yet, I suppose, the Author himself, neither believes, nor desires that to be Law.

I know that to justify the Deprivation of Puritan Ministers 2 *Jac. I.* it was resolv'd, that the King, without a Parliament, might make Constitutions for the Government of the Clergy ; and might deprive them if they obeyed not ; the Case is reported by Sir *Francis Moor*, Sir *George Croke*, and Mr. *Noy*, mentioned by the Author. By the Authority of that Case, a Convocation is no more concern'd, than a Parliament in the making Canons ; neither of those Books give any Colour for the Author's Gloss, that they mean the King may make them in Convocation. And that Opinion, even with the Author's Comment upon it, goes no farther, than to enable the King in Convocation, to make Canons, to bind the Clergy ; nor is there any Pretence, or colour of Reason, that Canons, made in Convocation, should bind the Laity, who are not represented by it, nor so much as concern'd in the Choice of the Members of it. But I must observe that this was no Judicial Opinion, but was given in the *Star-chamber*, at a Time when the Tyde run high against that sort of Men, and Resolutions were taken to root them out. But to these Cases cited by our Author, I will oppose the Judgment of the Parliament, 12. *Car II.* Cap. 12. which provides, that that *All should not confirm the Canons made in the Year 1640. nor any of them, nor any other Ecclesiastical Laws, or Canons, not formerly confirmed, allowed, or enacted by Parliament, or by them established before the Year 1639.* by the established Laws of the Land. I suppose that Parliament, meant such Canons, as Time out of Mind had been received and
accepted

Moor 755.
Croke Jac.

37.
Noy. 100

Letter
page 64.

accepted as Laws; 'tis plain that Act meant something by those Words, which the Canons of 1640 wanted, and that could not be that they should be confirm'd by the King, for those Canons had all the Sanction which the King, under the Great Seal of *England* could give them.

The Judgment of the Parliament 12 *Car. II.* (which is never to be suspected of want of Zeal for the Church) I take to be of much more Weight, and Authority, than all the Extrajudicial Opinions which have been in that Matter, either before, or since that Law was made.

But I will give you an Instance or two more, which may discover the Sense of our Legislature in this Case.

The Institution of a Christian Man, which contains the Doctrines, and the Rites, and Ceremonies of the Church, was compiled by the Convocation, and yet confirm'd by Parliament 32 *Hen. VIII. cap. 26.* the 6 Articles were settled in Convocation, and yet my Lord *Rolls* observes, they were confirmed by Parliament; without taking notice of the Convocation.

Abridg.
2. Part.
226.

The 39 Articles were made in Convocation 1562, and confirm'd by Parliament 13 *Eliz. cap. 12.* and by that Act, all Clergy-Men are oblig'd to subscribe them under Pain of Deprivation: If a Convocation hath Power in any Case, without Parliament, to make Canons, one would think it should be to determine Matters of Doctrine, and to punish those who would not submit to them with Deprivation, which is an Ecclesiastical Punishment. The Act 1 *Eliz. cap. 1.* seems an Evidence of the Opinion of that Parliament, that the Convocation alone, or the King in Convocation, without the Parliament, cannot declare Heresie, for it restrains the Ecclesiastical Commissioners to declare any Matters not therein mention'd, to be Heresie; but such

as shall hereafter be determined to be Heresie, by the Parliament ; with the Assent of the Clergy in Convocation : the Book of Common-Prayer was reviewed, and settled by the Convocations of both Provinces, at the Restoration of King Char. II. and yet the use thereof was enjoined by Act of Parliament 13, and 14, Car. II. the Author saith, *he can see no reason, why in things of a Spiritual Nature, the Rules of a Convocation should not oblige us, as our Acts of Parliament in things of a temporal Nature oblige them ;* it were altogether as reasonable to contend that in Matters of Trade, and Merchandize, the Resolves of an Assembly of Merchants, should be of equal Force with an Act of Parliament ; the Law Merchant, and the Canon Law, are both in force in *England* upon the same Authority ; not by any Strength of their own, but by Force, and Vertue of the Common-Law, and as they are a Branch of it, and the Power of Merchants, and Ecclesiastical Persons, in making those respective Laws, is in both the same ; their Interest consists in Advice ; but neither of them hath any Legislative Capacity.

To this purpose, I desire you to give me leave to transcribe a few of the Words of my Lord Chief Justice *Vaughan*, in his Report of the Case of *Edes*, and the Bishop of *Oxford* : they are these : *If Canon-Law be made part of the Law of the Land, then is it as much the Law of the Land, and as well, and by the same Authority as any other Part of the Law of the Land ; and if it be not made the Law of the Land, then hath it no more Effect, than a Law of Utopia, therefore the Canon-Law, in force here, is the Law of the Land.* It may perhaps be supposed that the Judge speaks of the Foreign Canon-Law, but our Law makes no difference between Canons made by Councils abroad, and those

those made by our own Convocations; they stand up-
on the same Foot in *England*, and are both foreign
in Respect of the Common-Law, the Provincial Ca-
nons and Constitutions intended to be confirmed by
25 *Hen. VIII. cap. 19.* were (if we believe *Dr. Cosins*,
in his Answer to the Abstract) such as had been made
by our *English* Synods: and if those Canons wanted
Confirmation before the 25. *Hen. VIII.* what Power
have they acquired since? I might here as an Instance
of the Judgment of the Clergy of *England*, in this Mat-
ter, produce many *English* Canons, in Matters merely
indifferent, which are not at all observed by the Clergy
themselves; but those Instances are so well known to
all who are conversant in our Canons, that I need not
spend your time to enumerate them.

The Author provides that in his Canons, which are Letter.
page 63.
not to want the Confirmation of Parliament, shall not
impugne Common-Law, Statutes, Customs, or Prerogative.
Now, I must needs confess, that I cannot form any
Notion of Canons, whereof the Matter is merely new,
which will not be repugnant to those Conditions:
indeed a Canon which is declarative, either of the
Law of God, or the Kingdom, will not be repugnant
to those Laws, because it is made in affirmance of
them; but then such a Canon hath no Force, as it is
a Canon, but as it is warranted by some precedent
Law; but a Canon whose Matter the Law hath left
indifferent, must needs impugn the Common-Law: For,
First, I have a Right by Law, to do all Things, which
the Law doth not forbid, and a Canon made to de-
bar me of that Right, must needs be repugnant to
the Law, which gave it me; for nothing can make
that unlawful, which was lawful before; but an ex-
press, and direct Prohibition from the Legislator, who
alone hath Power to abridge, as well as grant a Right.

Secondly, a Canon in a Matter merely new, cannot but be contrary to the Common-Law, in as much as it subjects a Man to the loss of his Freehold, or his Liberty, for doing an Act which the Law had left in his Power : for Deprivation, and Excommunication, are Ecclesiastical Punishments, and Imprisonment is the Consequent of Excommunication ; and yet no Man ought to be deprived of his Possession, or his Freedom, but by Judgment of the Law ; wherefore I may conclude that a Canon which makes a Man liable to such Punishments, for committing that which before was lawful, is contrary to the Liberty of the Subject, and by Consequence repugnant to the Common Law.

I shall not trouble you with an Inquiry, how far the Canons of a Convocation, without Confirmation in Parliament, do oblige us *in foro conscientie* ; I willingly subscribe to what the Author saith of the *Parts, Learning, Virtue and Piety, of the Clergy of England* : I allow that *Gown, to be as Venerable in it self, as it is in respect of those who wear it,* and I will allow the Decisions of a Convocation, to be as obliging, as the Opinions of any Men, which are not Laws ; their Resolutions, when made without Art, or Faction, ought to be esteem'd as most wholesom Admonitions, and Instructions ; they ought to be as obliging to us, as the Advice of a Physician to his Patient, or the Council of him whom we know to be Skilful in this Profession ; but Laws they cannot be : the Power of the Church, consists in Exhortations, Council, and Admonitions ; it is the Consent of the Magistrate which makes them Laws.

I have done with the Author's Questions, and now ought to answer that of yours ; to what End this Letter was wrot ? If you consider with what Contempt and Injury he hath treated the King ; with what Scandal he hath charged the best of his Subjects ; and how
he

he hath detracted from the only Legislative Power in *England*; you will easily be convinced, that it was calculated to do all the Mischief that might be.

It remains only now, that I give you my Thoughts concerning the Power of the University of *Oxford*, in Ecclesiastical Matters, and particularly to decree and declare Heresie: wherein I shall endeavour to state the just Privileges of that University, which in all Ages hath made a noble Figure in the learned World; and at this Day is able to produce as large a Catalogue of learned Men, as any University in *Europe*: The Heat and Folly of a few Men, ought not to be imputed to that Grave and Venerable Body; such Men make the greatest Noise in all Societies; but it is like the crackling of Thorns, it is soon gone, and heard no more. By meddling in other Men's Matters, they court the Reputation of being Publick-spirited; but in the Opinion of the most Judicious, they are such Gossips as *St. Paul* describes to be idle, *wandering about from house to house*; 1 Tim. 5. 13. and not only idle, but talkers also, and busie bodies, speaking things which they ought not. But God be thanked, tho' the Noise is great, yet the number of these Triflers is very contemptible; and it is not to be doubted, but they themselves will soon be so too; for a great Name, without real Merit to support it, is like a Meteor blown up by the Air, which when the Blast is gone, falls down into the Dirt. The Reign of these Men will be very short; for the grave and learned part of that Society will at length find it necessary to rouse themselves, and no longer suffer the impertinent Heat of a few idle and illiterate Tattlers to pass upon the World, as the Act, or Sense of the whole University.

But I proceed to what I promis'd; and first, I shall take it for granted, that an Exemption from Ecclesiastical Jurisdiction, or the exercise of it, are not implied

ed in the Notion of an University. In the Civil-Law, *Universitas* signifies a Corporation or Society of Men, united and incorporated for some common End ; and the Law of *England* considers it in no other Sense but as a Corporation, having such and no other Privileges than Time immemorial, or the Favour of Princes have indulg'd them with ; so that when we see any Privilege claim'd by an University, we may bring them to this Test, and inquire whether by ancient Usage, or by the Grant or Charter of any Prince, they are intitled to it. Indeed some Canonists are very liberal to all Eleemosinary Foundations, and suppose that not only Universities, but Colleges also, and Hospitals, have right to exercise Ecclesiastical Jurisdiction ; but those Opinions speak only the Fancies of the Authors of them, and cannot devest Bishops of that Power which of common Right doth belong to them.

Having laid this Foundation, I shall consider, *First*, to what Ecclesiastical Jurisdiction the University of *Oxford* is subject ; and *Secondly*, What Ecclesiastical Jurisdiction it hath right to exercise.

I. They are subject to the Visitation of the Archbishop of *Canterbury*.

The Bulls of Pope *Boniface* VIII. in the Year 1301. and of Pope *Sixtus* IV. in the Year 1479. which exempted that University from all Jurisdiction, Dominion, and Power of any Archbishop or Bishop whatsoever ; gave them some Colour to think that they were not subject to the Visitation of their Ordinary, or Metropolitan ; and when *Thomas Arundel*, Archbishop of *Canterbury*, 20 R. II. intended to visit them, they set up the Bull of *Boniface* in Barr of this Power : But the King, to whom that Matter was referred, required them to renounce that Bull, and to submit to the Archbishop, telling them that such an Exemption would be their
ruine ;

ruine; and afterwards by Decree under the Great Seal, declared, that the *Visitation of the Chancellor, Proctors, Doctors, Masters regent and not regent, and of the Scholars, and privileged Persons of the same University*, did of right belong to the Archbishop, and his Successors, and to the Church of Canterbury. And afterwards 12 H. IV. the then Archbishop being again opposed in his Visitation of the University of Oxford, by the Chancellors and Proctors, the King confirmed the Decree of King R. II. with this Addition, *That as often as the Archbishop, or his Successors, or his or their Officers should be interrupted in their Visitations by the University, their Liberties should be seized into the King's Hands, and there remain, until the Archbishop should be suffer'd to Visit in quiet; and that for every such Interruption, they should forfeit to the King 1000 l.* And at a Parliament held 13 H. IV. the Archbishop in a Petition set forth these Proceedings, and the Decrees of both those Kings at large; and the same were confirmed by Act of Parliament. And shortly after the Pope repealed that Bull of *Boniface VIII.* For this Contempt to the Archbishop, the Chancellor was deposed, and both the Proctors imprison'd. That other Bull of Pope *Sixtus* was repealed by 28 H. VIII. cap. 16. Since that Act, all pretence of Exemption is remov'd; the University is Visitable of common Right by the Archbishop, as it is within his Province; and all its Exemptions are damn'd by Act of Parliament. Of this Opinion was Archbishop *Land*, in the Year 1636. who although he was Chancellor of this University, and a great Patron of its Liberties, was not contented to Visit that University as their Chancellor, but insisted upon his Right to Visit both Universities, and every Member in them, *Jure Metropolitico*, as to their Obedience to the Doctrine and Discipline of the Church of England. And this Matter

*Pryn ad 4
Instit 357.*

*Cott. Abrid.
of Re. &c.*

*Rushw. Col.
Part II.
323.*

Matter being heard before the King in Council, the University insisted, that they were founded by His Majesty's Progenitors, and therefore ought to be Visited only by him ; but his Majesty adjudg'd, that the Right of Visiting the Universities, and of the Chancellors, and Scholars, and of all Persons enjoying the Privileges thereof, did belong unto the Archbishop, and the Metropolitan Church of *Canterbury*, by themselves or their Commissaries, and that as often as they pleased ; and this Sentence his Majesty directed to be drawn up by his Council, , and sealed with the Great Seal of *England*.

II. They are subject to the Visitation of the Bishop of the Diocese, and he hath a concurrent Jurisdiction with the Chancellor, of all Ecclesiastical Offences committed by any Scholar, or Member of the University.

The Bishop of *Lincoln* (within whose Diocese *Oxford* was) had anciently the sole Power and Government of that University ; the Chancellor had no power to enter upon his Office, until the Bishop had confirm'd his Election : He directed the Course of their Studies, and no Person could take any Degree in Divinity, until he had been examin'd and approv'd by him. All Ecclesiastical Jurisdiction over Scholars was exercis'd by the Bishop ; and the Chancellor had no power to intermeddle therein, but by Commission, and as his Vicegerent. The Office of Chancellor was then an Annual Office, and always exercised by a Resident Member of the University ; and the Bishop of the Diocese was in a great Measure invest'd with that power which now belongs to the Chancellor. But this power of the Bishop decay'd by degrees. Pope *Boniface* exempted the University from all Episcopal Visitation ; and Pope *Urban*, in the Year 1368, made the Electi-

on of the Chancellor complete, without expecting the Confirmation of the Bishop.

Mr. Wood in his *Oxford Antiquities*, supposes that Fol. 38.
207. these Bulls do exempt the University of *Oxford* from the Jurisdiction of the Ordinary: I have given you my Thoughts already of the first, and I will not say much to the other: He supposeth that the Bishop by confirming the Election of the Chancellor, gave him Right to exercise Ecclesiastical Authority; and that the Bishop having renounc'd his Right of Confirmation, did thereby commit his whole power to the Chancellor: But this Supposition of the Author is warranted by no Reason; for the Bishop was set over them in two Capacities, as their Visitor, and their Ordinary; they were distinct Interests, and might subsist apart. Mr. *Rushworth* in his Report of the Dispute between the Archbishop and both the Universities, concerning his power to Visit them, saith, That when the King had declar'd in favour of the Archbishop, he moved the King that the University might remain free from the Visitation and Jurisdiction of the Bishop of the Diocese, or Archdeacon. His Grace having maintain'd his own Right, was contented that the Bishop should be depriv'd of his: But upon this Report I shall only observe these things. 1. That the University of *Oxford* had the same, and no other Right, to be discharged from the Visitation of the Archbishop, as from that of the Bishop; and by consequence that the King declared for the Bishop, when he gave Judgment for the Archbishop. 2. That the Bishop was not present, nor heard, and therefore that Judgment was null in respect of him. 3. If he had an antecedent Right, as I think it very clear he had, then cannot that Right be affected by his Majesty's Judgment. Upon the whole Matter then, I shall conclude, that notwithstanding the

frequent Strugglings of the University of *Oxford*, and the mighty Interest which hath supported them in every Age, the Bishop of the Diocess doth yet retain his Ordinary power over them, and hath at least a concurrent Jurisdiction with the Chancellor over the Members of that University in Ecclesiastical Causes. The Pope's Exemptions were void in themselves, and the first of them was repeal'd by the Pope himself, and the rest are declar'd null by Act of Parliament: They have no Charter of Exemption from any of our Kings, nor any Composition with the Bishop of the Diocess, which may deprive him of his ordinary Jurisdiction: He had an Original Jurisdiction over them in Spiritual Causes, and doth yet retain it.

III. The Chancellor, Masters, and Scholars of the University of *Oxford* are exempted, as *such*, from the Jurisdiction of the Archdeacon of *Oxford*; I say, as *such*, because if they take upon them any Cure of Souls within the University, they are in that Capacity subject to his Jurisdiction. The Right of Ecclesiastical Jurisdiction was long controverted between the Chancellor and the Archdeacon; and at length, in the Year 1345. was settled by this Composition, *viz.* That the Chancellor should have Jurisdiction, without disturbance of the Archdeacon, over all Doctors, Masters, Scholars, and Religious and Secular Persons of the University, and over the Menial Servants of all Scholars, and over the Six Bedles, and Four Stationers, and all Writers for Scholars: And the Archdeacon was to have Jurisdiction of all other Persons, who were intituled to the Privilege of the University: And such Scholars as were Parish-Priests in *Oxford*, were to be subject to the Archdeacon, as to Canonical Obedience; and to be visited and corrected by him in all things belonging to his Jurisdiction as Archdeacon. Compositions of this nature

nature were in those Days very frequent, and most of the Archdeacons, Commissaries, and Officials in *England*, owe their Jurisdiction to them. I need not enquire what force such a Composition would have now since the disabling Statutes of *Queen Elizabeth*, it is surely not to be doubted but this Composition, ratify'd by the Usage of all Times ever since, is sufficient to exclude the Archdeacon from the exercise of all Jurisdiction over Scholars: And that he cannot at this Day have recourse to his Ancient Power, nor claim any Authority in that University, which is not consistent with this Act of his Predecessor.

My Intention being to discourse only of the Spiritual Power to which that University is subject; I have taken no notice of the King's Prerogative over them, although the acknowledgment of both Universities in the Contest (which I have mention'd) with Archbishop *Laud*, and the Practice of several of the Kings of *England*, have left it most evident, that the King hath Right to Visit that, as well as any other Foundation of his Royal Predecessors.

I proceed, *Secondly*, to consider the Ecclesiastical Jurisdiction of the University of *Oxford*, which is very great, and extends to Heresie; and all Ecclesiastical Offences whatsoever, committed by any Scholar, or Member of the University.

If you ask me by what Title they claim this Power? I must needs acknowledge that I cannot tell; they have it not by Prescription, because we can assign a time when they had it not: Nor can I find, upon the best Search which I can make, any Charter which grants it to them, unless in some particular Cases by the Charters 16 *July* 1 *E.* 3. and 27 *July* 29 *E.* 3. which give them power to proceed by Ecclesiastical Censures for certain Temporal Offences. The Char-

ter 1 *June* 31. E. 3. which gives the Chancellor power to certifie Excommunications into the Court of *Chancery*, supposeth a Right to exercise Ecclesiastical Jurisdiction, but I know none that grants it. But whether this Right began by lawful Title, or was by degrees usurped upon the Bishop of the Diocess, I am not concerned to inquire. I think 300 Years possession will justifie my Assertion, that they have now a Right to exercise Ecclesiastical Jurisdiction ; but this Jurisdiction is confined to the Chancellor's Court ; and no other Assembly, not the Heads of Houses, nor the Convocation it self, have any power to meddle in that Matter. The meeting of Heads of Houses have no power herein, that Meeting is a late Constitution in the University : It began about the Fourteenth Year of *Queen Elizabeth*, by the Advice of the Earl of *Leicester* their Chancellor ; and was afterwards by the direction of King *Charles* the First, establish'd ; and their power determin'd by a Statute of the University : Wherefore, they who are a Creature sprung up but yesterday, cannot prescribe in the use of this power ; and no Charter gives it them, or so much as takes notice of them. And if their Statutes could invest them with Ecclesiastical Jurisdiction, (which I shall inquire of presently) yet they are altogether silent in that Matter. When I have told you this, you will expect to hear, by what Authority the Heads of Houses at their Meeting 25 *Oct.* 1695. did *adjudge, declare, and decree* certain Propositions to be *false, impious, and heretical*. I must plainly own, that I think they were mistaken in their power, they have no Precedent for the like Act, and can hardly shew that they ever publish'd their Opinion, much less that they took upon themselves to *adjudge, declare, and decree Heresie* before that time. They who have taken upon them to defend this Decree, do endeavour

deavour to justify it by the Statutes of the University: the Author's of the Answer to Dr. Sherlock's Examination, &c. and of the Pamphlet intitled, *The Master of the Temple as bad a Lawyer, &c.* do both agree upon two Statutes, which they say will maintain this proceeding; and they represent them in the same Words; the first is out of the Statute de *Authoritate, & Officio Vice-cancellarii*, the Words cited in those Books are these; *Hæretici, Schismatici, & quicumque alii minus rectè de fide Catholica, & doctrina vel disciplina Ecclesie Anglicanæ sentientes, usq; tam conciones, quam libri quibus male sanæ opiniones propagantur, cohibeantur.* And this referred, with Dr. Sherlock's good leave, (saith the Answer to the Examination), *Vice-cancellarii judicio assidentibus ipsi præfatis in ordinario ipsorum conventu.*

If I should admit this Statute to be one intire Provision, and that all the Powers in it were to be executed by the Heads of Houses, yet I cannot see what use those Authors can make of it, or wherein it warrants that Decree; but I will not spend your time in answering an imaginary Statute, I will fairly state the Statute as it is, and leave you to your own Remarks, and to judge of the Candor of the Gentlemen who have produc'd it.

The Statute consists of several Branches, one is, *ipsius est, (sc. Vicecancellarii) ut hæreticos, schismaticos, & quoscunque alios minus rectè de fide Catholica, & doctrinâ, & disciplinâ Ecclesie Anglicanæ sentientes, procul à sinibus Universitatis amandandos curet*, and then after a Paragraph or two intervening, is this distinct Clause: *quod si quis de schismate suspectus, Vicecancellarii judicio, assidentibus ipsi præfatis in ordinario ipsorum conventu, reus hujus Criminis compertus fuerit, he is for the first Offence to be fin'd at the Pleasure of the Vice Chancellor, and for the second, and third Offences, he is to be punish'd*

as

* not usq;
as cited by
those Au-
thors.

as is farther Directed by that Statute; and after in the same Statute, but in a distinct Paragraph it is provided thus, *utque tam conciones quam libri quibus malefana opiniones propagantur, cohibeantur* (itself is understood) this Statute is so far from giving the Heads of Houses, a Power to declare Heresie; that it doth not so much as give them Power to proceed Judicially against it. The Heads of Houses are to assist but in one Instance, although those Authors have confounded the Clauses, and made their Concurrence Necessary in all. I must confess when I first perus'd the Statute it self, I read it with some Indignation, to find how much those Gentlemen had prevaricated in the recital of it. But this Statute being printed only in the larger Volume, which is in very few Hands; they thought they might securely represent it, so as would best serve their Turn. The other Statute, which they rely upon, runs thus, *Siquis pro Concione aliqua intra Universitatem, ejusve precinctum habita, quicquam doctrinae, vel disciplinae Ecclesiae Anglicanae publice Receptae dissonum, aut contrarium protulerit, seu protulisse ab ipso Vice-Cancellario suspectus, vel ab alio aliquo rationabilem suspicionis Causam afferente delatus fuerit*, the Vice Chancellor may thereupon proceed, *adhibito consilio sex aliorum Theologiae Doctorum (quorum unus sit sanctae Theologiae Professor Regius si concioni interfuerit.)* This Statute intends a Distinct Jurisdiction from that of the Heads of Houses, and though amongst the Heads of Houses, who made that Decree, there were six Doctors of Divinity, yet they were not assembled in that Capacity, nor as Judges within this Statute. But to let that pass, I cannot find wherein this Statute doth justify the Proceedings of those Gentlemen, it gives them no Authoritative Power to declare Heresie, nor so much as to procede to the Punishment of it; all that is directed by it, is
to

to suspend the Offenders from preaching in the University, or to oblige him to recant : and even in that Case the Offender ought to be before them in Judgment : so much is implied in the Statute it self, and the Injunctions of King *Char. I.* in the Year 1631, upon which that Statute was founded plainly directs it ; and so hath been the Practice upon this Statute ever since ; they first cite the Person, and demand a Copy of his Sermon, and if upon Examination of it, they find Cause, they direct him to recant ; thus they proceeded against *Thomas Hill, Thomas Ford, Giles Thorne, and William Hodger*, in the Year 1631, against *William Hobbs*, in the Year 1632, against *Thomas Cooke*, in the Year 1634, against *Richard Kilby*, in the Year 1637, against *John Johnson*, in the Year 1640, and against many others since. The Intent of both those Statutes was to give the Vice-Chancellor Power to reform the Offender for the Example of others, and not to declare a proposition indefinitely Heretical. He may when a Person is before him in Judgment in his Court, determine whether the Fact whereof he is accused, is Heresie or not ; (but even that is not given by these Statutes) but he cannot, either alone, or with the Advice of the Heads of Houses declare a Doctrine in general heretical ; the one is the Exercise of an Ordinary Power, the other is to assume a Power which no Prelate, no not the Arch-Bishop himself, can lawfully exercise as a further evidence of this Matter, you may please to peruse the Statute *de Hebdomadali & ordinario conventu Praefessorum Collegiorum & Aularum*, which particularly enumerates the Power of this Assembly, but gives them none such as they assumed in this Decree. But I shall observe, lastly, that if by any Construction, those Statutes, or any other maintain that Decree, they are in that Respect void in themselves ; they cannot give the Vice-Chan-

Chancellor with the Heads of Houses, or with six Doctors of Divinity, Jurisdiction of Heresie, much less Power to declare a Doctrine Heretical. The Statutes of the University are consider'd as the By-Laws of other Corporations, and have the same Conditions annexed to them; If the Power which is assumed by that Decree was granted by any Chater which is within the Confirmation of the Act 13 Eliz. that alone would justify it, without recurring to their Statutes, but that is not so much as pretended. It is true, several of their Charters which are not only confirmed, but enacted by Parliament, do give the University Power to make Statutes, Laws and Ordinances, for the well governing of the University; but those Statutes must be warranted by the Rules of Law; they must not be repugnant to the King's Prerogative, or the Liberty of the Subject; and therefore a Statute, which erects a new Court in Case of Heresie, or gives Power to declare Heresie, must needs be void; because the King alone can grant the first, and the last can be granted only by Act of Parliament; their Statutes were never confirmed by Parliament, nor have their Charters been confirmed since these Statutes were made. The Answer to Dr. Sherlock's Examination lays some weight upon the Confirmation, which the Statutes of the University received from the Arch-Bishop of *Canterbury*, under the Archiepiscopal Seal; and from his Majesty, under the Great Seal of *England*. I cannot find what kind of Confirmation that was; but I answer in a Word, the Statutes give no such Power as the Decree arrogates—and if they did, they were in that respect void in themselves, and those Confirmations could not make them good.

I have

I have done with the Decree of the Heads of Houses; and now you will expect I should say something to the Decrees made by the Convocation of that University in the Year 1683 and 1690. I shall not concern my self to enquire of the Matters of these Decrees, nor to what end they were made; but shall confine myself to the Authority of those who made them; *That of 1683, to the Honour of the Holy and Undivided Trinity, and the Preservation of Catholick Truth in the Church, doth decree, judge and declare certain Propositions therein mentioned to be false, seditious and impious, and most of them to be also heretical and blasphemous.* And the Decree of 1690 hath the same Words in relation to the Propositions therein condemned: The Terms of those Decrees compar'd with the Constitutions of our *English Synods*, speak no difference between the Authority of a Convocation of that University, and of the whole Nation: For what can be more Authoritative than those Words, *decree, judge and declare*; and that for the Preservation of Catholick Truth, not in the University, but in the Church. Surely these Gentlemen thought themselves in full Synod; and that they were not the Representatives of the University only; but of the whole Church. What I have said upon the Subject of the Decree of the Heads of Houses, may in a great Measure be applied to these. They have no Charter which grants this Power to the Convocation, and Statute alone (as I have told you before) is not sufficient, altho' they want even that to warrant these Proceedings. They have a Statute *De negotiis in domo Convocationis tractandis*; And the first Section of that is intitled *Enumeratio Negotiorum quæ ad domum Convocationis spectant*: The second is, *de Statutis & Decretis in domo Convocationis condendis & interpretandis*: But neither of these, nor any other which I can find, do give them any such Power as is necessary to justify those Decrees. And if the great Formality which is requir'd in the making Statutes, and Decrees according to those Statutes, is compar'd with the Proceedings of the Convocations in 1683 and 1690, it will appear very evidently, that those Convocations did not pretend to Statutes for their Proceedings. The Statutes direct, that in making Statutes or Decrees, the Matter shall first be proposed in the Weekly Meeting of the Heads of Houses; and being well consider'd there, and the Form agreed upon, the Proctors shall propose it to the Congregation, three Days at least, before the Convocation; and after that, it shall be proposed in

Convocation ; and when the Terms are agreed upon, it shall be put to the Vote, and reduc'd into an Act ; but shall not have the Force of a Decree or Statute until 30 Days after it is agreed in Convocation.

It was a serious Jest to observe how little of this Caution was used in the Decree 1683, where the Heat of those times so far transported the learned Men of that University, as to oblige them to abandon their own Judgments, and with an implicate Faith to condemn seven and twenty Propositions, without considering, or scarce knowing what they were. I forbear to mention any of the Propositions branded by that Decree ; but I hope hereafter, that wise Body will judge for themselves, and not prostitute their Decrees to Court Purposes, for the ambitious Desires of a few aspiring Men.

But I will proceed to shew you, that as this Power to decree and declare Heresie, hath no Foundation upon their Charters, or Statutes ; so neither is it justified by the Example of their Predecessors.

I agree that the Convocation of the University, as a learned Body, may give their Opinion ; and that their Judgment, if deliberate and sincere, ought to be of very great Authority with all learned Men ; and it is unquestionably their Duty to prevent the Growth of Heresie among those committed to their Charge ; but that with these two Cautions : First, When they give their Opinion, they ought to pronounce it as such ; and not in such an Authoritative Manner, as is assum'd by these Decrees. Secondly, They ought not to make their own Opinions the Measure of Heresie ; but ought to expect the Declaration of those who have Power to declare Heresie, before they prohibit any Doctrine to their Scholars, as such. They ought to ground their Prohibition upon the Judgment of their Superiours, and make that their Rule, without any of those new Words, *Decernimus, judicamus, declaramus, &c.*

I will fairly lay before you all the Instances (which upon the best Search I can find) wherein they have given any Opinion, or intermedl'd in Matters of Doctrine, and apply them to these two Rules : And first, I will shew that when they have taken upon them to give any Opinion, they have for the most part done it in Obedience to their Superiours, and then they have pronounc'd it modestly, not as a Rule for others, but as their own private Opinion : And secondly, That they did never

never forbid any Doctrine to their Scholars, before that very particular Doctrine was first declared erroneous, or heretical, by some Persons, who were then reputed to have Power to declare Hereſie.

1. I ſhall maintain the firſt of theſe Rules by the following *Vide the* *Writ de* *Prya, ad 4.* *Inſtit. 229.* *Instances,* 18th of July, 19. R. 2. the King in his Writ to the Chancellor of the University of Oxford, takes notice, that in a Book of *John Wickliſſe*, called *Trialogus*, were contained many Hereſies and Errors, contrary to the Determinations and Canonical Inſtitutions of the Church; wherefore the Writ commands him to call together the Doctors of Divinity, and in their Preſence to read and examine that Book, and to write out all the Hereſies and Errors therein; and to certifie him in *Chancery*, together with their Opinions thereof, that upon Peruſal thereof, the King, by the Advice of his Council, might make ſuch Order for the Support of the Catholick Faith, as he ſhould think neceſſary. It doth not appear what was done in that Matter: But we may obſerve, that they were only requir'd to give their Opinions, and not by a formal Inſtrument to condemn the Doctrines in that Book, that was reſerv'd to the King and his Council: Nor did they adventure to give any Opinion of that Book (altho' it made great Noiſe in the World) before the King himſelf commanded it.

2. King *Henry* the 8th having in vain ſolicited the Court of *Rome* for a Divorce from *Katherine* his Brother's Wife, reſolv'd to conſult the chief Universities and Divines in *Europe*: And in the Year 1530, he ſent to the University of *Oxford* for their Opinion in that Matter; who in their Convocation the 8th of *April* 1530, certify'd their Opinion under their common Seal; wherein they ſet forth, that the Duty of their Profeſſion, and Chriſtian Charity do oblige them to give Satisfaction to all who deſire it, of their Faith and Knowledge: Wherefore they ſay, that having duly conſider'd the Queſtion, and the Arguments on both ſides, they do think thoſe moſt probable, certain, and agreeable to Scripture, and to the Opinion of the Fathers and Commentators, which maintain, that it is not lawful for a Man to marry his Brother's Wife, carnally known by him: Wherefore they ſay they have thought fit to answer, as the Opinion of the whole University, That it is not lawful, &c.

3. In the ſame Year *Archbiſhop Warham* then Chancellor of the

A Letter to a Member of Parliament ;

University, sent the Will of *William Tracy Esq;* to be examin'd by the University, whether it contain'd Heresie or not, who certify'd their Opinion, that it was not agreeable to the Catholick Faith.

4. King *Henry the 8th* being desirous to assert the Supremacy of the Crown of *England*, consulted the Learned Men in most of the great Monasteries ; and in the Year 1534, sent this Question to the University of *Oxford*, viz. *Whether the Bishop of Rome had any greater Jurisdiction committed to him by God in Holy Scripture, within this Kingdom, than any Foreign Bishop ;* and commanded them to return their Opinion to him under their common Seal: In answer to which their University in Convocation, return'd an Instrument under the common Seal, dated the 27th of *July 1534* ; wherein they recite, that it is agreeable to their Profession to shew the Way of Truth, and Righteousness to all that desire it ; and that having called together all the Divines of the University ; and having for many Days with all Zeal, Religion and Piety, search'd the Holy Scriptures and the best Interpreters of them, and exactly compar'd the Texts ; and having solemnly and publickly disputed thereof, they at length had agreed in this Opinion, *That the Bishop of Rome had no greater, &c.* The same Question was afterwards in the same Year propos'd to every particular College and Hall in that University.

5. In the Year 1647, when the Visitors appointed by the Parliament, came to *Oxford*, to enquire who had refused to take the Negative Oath, and the solemn League and Covenant, the University in Convocation resolved to publish the Reasons of their Refusal, which they agreed to call *Judicium Universitatis Oxoniensis*. In this they propose their Opinion, and fortifie it with great Strength of Reason: They speak only for themselves, and declare they do not intend to judge others ; but to purge themselves before God and Men, from all Suspicion of Obstinacy ; and that upon better Information, they shall be willing to retract this Opinion, and to submit.

This Opinion was first read, and approved by Private Colleges, and afterwards 1 *June 1647*. passed the Convocation ; You find no authoritative Words in any of these Instances ; they
speak

Speak only the Opinion of Learned Men, and those very deliberate, and upon great Consideration; and seldom given before they were commanded. They modestly propose their Reasons, and desire that the strength of them may be the Measure of the Authority of their Opinions: Many of these Questions were proposed to other Universities, and to several Monasteries, and to the Colleges and Halls in the Universities: Information and not Authority was expected from them; and therefore none of them speak in the pompous Style of 1683, 1690, or 1695.

2. The Convocations of the University of Oxford have never forbid any Doctrine to their Scholars, before that very particular Doctrine was first declar'd Erroneous, or Heretical, by some Persons who were then reputed to have power to declare Heresie.

I shall begin with the Case of *John Wickliffe*, which is the first Instance which I can find, wherein that University censured Heresie, or intermeddled with Matters of Doctrine: This Man, towards the latter end of the Reign of King *Edward III.* had the courage to publish several Opinions and Conclusions, contrary to the Doctrine then received in the Church; for which, in the Year 1376, he was cited to appear at *St. Paul's Church in London*, before an Assembly of Bishops, and was forbid to preach those Doctrines any more. In the Year 1378.

Fox 1 Part
491.

the Pope in his Bull sent to the Chancellor of the University of Oxford, to take notice of the Heresies spread by *Wickliffe*, and commanded them not to suffer those Heresies, false Conclusions, and Propositions to be disputed of, or brought in Question.

Fox 1 Part
491.

The same time the Pope wrote to the Archbishop of *Canterbury*, and the Bishop of *London*, and inclosed *Wickliffe's* Conclusions in his Letters, declaring them to be Heretical: And in pursuance of this Bull, *William Barton*, Chancellor of the University, in the Year 1381. forbid all Persons within the Limits of the University, to teach *Wickliffe's* Conclusions; which were mentioned in the Prohibition in the same Terms in which the Pope had condemned them. 21 May 1382, the Conclusions of *Wickliffe* were condemned in a Synod at *London*; and the Archbishop

Fox 1 Part
593.

of *Canterbury* in his Process upon that Decree, sets forth the Conclusions; and writes, that upon good deliberation it was published and declared by himself, and the Bishops, and other learned Men, who were present, that some of the Conclusions were

Vide the
Process at
large, 1 Fox
496.
Compare
this with
the Oxford
Decrees.

*Vide the
Mandate
at large,
1 Fox 497.*

*Vide the
Instru-
ment Prin-
4. Inf. 364.*

Heretical, and others Erroneous, and contrary to the determination of the Church. Upon this Decree the Archbishop sent a Mandate to the Chancellor of *Oxford*, to publish that these Conclusions were condemned, and not to suffer any to preach, or defend them in the University. And the 13 *July*, 6 *Ric. II.* (which was the next *July* after the Resolution of the Synod) the King issued out a Commission to the Chancellor and Proctors of the University of *Oxford*, authorizing them to inquire if any Person within their Jurisdiction, favour'd or believ'd any of the Conclusions condemn'd by the Archbishop, with the advice of the Clergy; and in pursuance of those Mandates, the University published the Conclusions condemn'd by that Decree, and forbid all Persons to defend them. They made that Decree the Measure of the Doctrine which was to be suppress'd, and took no notice of their own Prohibition, which was but a publication of the very Conclusions which the Pope had before condemn'd.

2. In the Year 1425. *William Russel*, a Scholar in *Oxford*, having published certain Opinions against Personal Tithes, was summoned to a Provincial Synod held in *London*, and there forced to recant; whereupon the University in a Letter to that Synod, taking notice of the Opinion, say, that lest their silence should interpret their consent to that Doctrine, declare, that they believe that Personal Tithes are due by the Law of God, to Ministers having cure of Souls; and that whoever maintains *Russel's* Opinion, shall in their Opinion be deemed an Heretick: They only declare their Opinion, and that not to the World, but by way of Excuse, to those who had Authority to examine it; and to purge themselves of an Opinion which a Synod had before condemn'd.

3. *Martin Luther* afforded a good Occasion to the University to exert this Power, his Doctrine spread mightily, and gain'd many Profelites; and yet the University did never, that I can find, interpose to brand it, or to declare it heretical: indeed in the Year 1521 by the Direction of *Cardinal Wolsey*, (who then being the Pope's Legate in *England*, was reputed to have Power to summon the Clergy) they sent up some of their Members, to joyn with the Prelates, and other learned Men in the Examination of that Doctrine, and at a Convocation held at *London*, by the Cardinal, and several Bishops, and
learned

learned Men, *Luther's* Doctrine was condemned; and a Copy of this Censure was sent to be publish'd in *Oxford*: the University interposed no otherwise herein, than as Instruments to publish their Censure, and to burn those Books which were branded by it.

4. Mr. *Wood* in his *Antiquities* saith, that about the Year 1553. Fol. 274. Arch-Bishop *Cranmer* was brought to *Oxford*, from the Tower of *London*, and that the University inquir'd of his Opinions, and pronounc'd him Guilty of Heresie; and burnt his Books. To this I say, *First*, that if the University did condemn this great Man's Opinions; they did but what the Parliament and Convocation had done before: Arch-Bishop *Cranmer*, together with Bishop *Ridly*, and Bishop *Latimer*, was brought to *Oxford*, about the 10th day of *April*, in the Year 1554, and the Convocation which was assembled 18 Octob. 1553, had before declared the Positions of those Bishops Heretical: But *Secondly*, this was not the Act of the University, but of Persons who came thither Judicially, and had Authority to try those Bishops for Heresie. Both the Universities deputed some of their Members to maintain the Roman Catholick Religion against those Champions for the Reformation; but the Sentence was pronounc'd by those who were sent to try them, and not by the University.

5. In the Year 1622, *William Knight*, having maintain'd out of *Paræus*, that it was lawful for Subjects to take up Arms against their Prince, to defend their Religion: The Vice-Chancellor committed him to Prison, and signified the matter to Dr. *Laud* then a Bishop, who told the King of it; whereupon the King conven'd as many Bishops as could be gotten together, who condemned that Opinion, and others of the like Nature, as Seditious, and contrary to the Scripture, and the Judgment of the Fathers, and Councils, and to the Doctrine and Canons of the Church of *England*; upon this Decree, the King and Council ordered *Paræus* his Works to be burnt, and sent this Order to the University Subscrib'd by Fourteen of the Privy Council, and then the University, collected out of *Paræus* several Propositions which tended to maintain that Assertion, and under each, by Vote of the Convocation, subscribed, *Hec propositio falsa, & seditiosa est, or impia*, according to the Nature of it. And at the end of their Opinion, concerning those
giv-

Propositions, they subjoyn'd, *that it is not lawful upon any Pre-
tence whatsoever, to take up Arms against the King.* This Reso-
lution of theirs is but a naked Opinion, and that not given
until an Assembly of Bishops had condemned the same Do-
ctrine. These are all the Instances which I ever met with,
wherein that University have inter-medled with Matters of
this Nature; and I have not, to my Knowledge, misrepresen-
ted any of them, or with-held any one Circumstance from
them. It may perhaps be objected, that several of these In-
stances are of Doctrines condemned by an Assembly of Bi-
shops, and not by the Convocation; I shall answer in a Word,
that he who looks into Church Affairs, will find the Act of
Bishops and learned Men, conven'd by Authority, to be as
Authentick, and as much a Rule for the Church, as the Acts
or Decrees of a Convocation. Upon all of them together
I shall make this Conclusion, that an Abbot in his Monastery,
or the Head of a College in his House, hath as much Ju-
risdiction in Matters of Doctrine, and Heresie, as the Heads
of Houses, or the whole Convocations of the University.

To what is offered for the reasonableness of such a Pow-
er in the University, to *decree, and declare, Heresie,* I shall op-
pose the Words of Dr. Sherlock, in his Examination of the
Oxford Decree. *The Authority of declaring and making Heresie,
may be of such pernicious Consequence to the Peace of any Church,
that it is not fit to be intrusted with any Body of Men, less than a
National Synod, for otherwise we may have as many different, and
contrary Religions, as there are Declarers and Decreers of Heresie,*

I am sensible I have very much tired your Patience, and
therefore, without detaining you with any Apology, I shall
conclude,

Yours, &c.

FINIS.

